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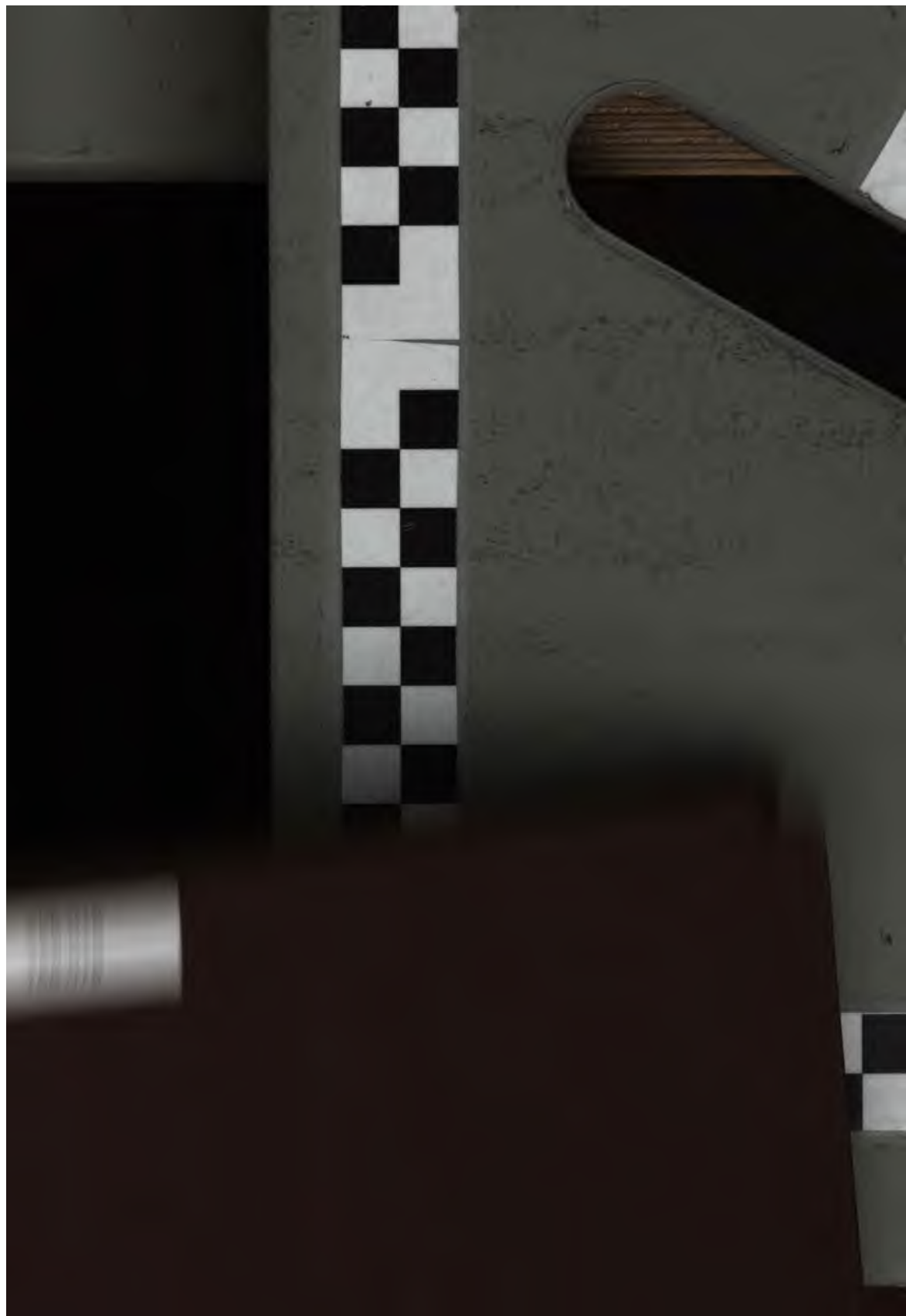
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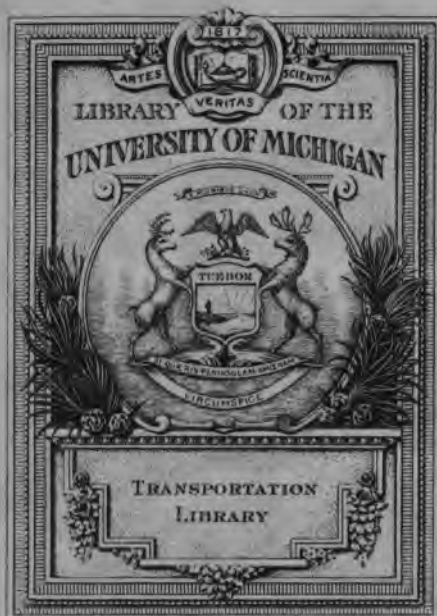
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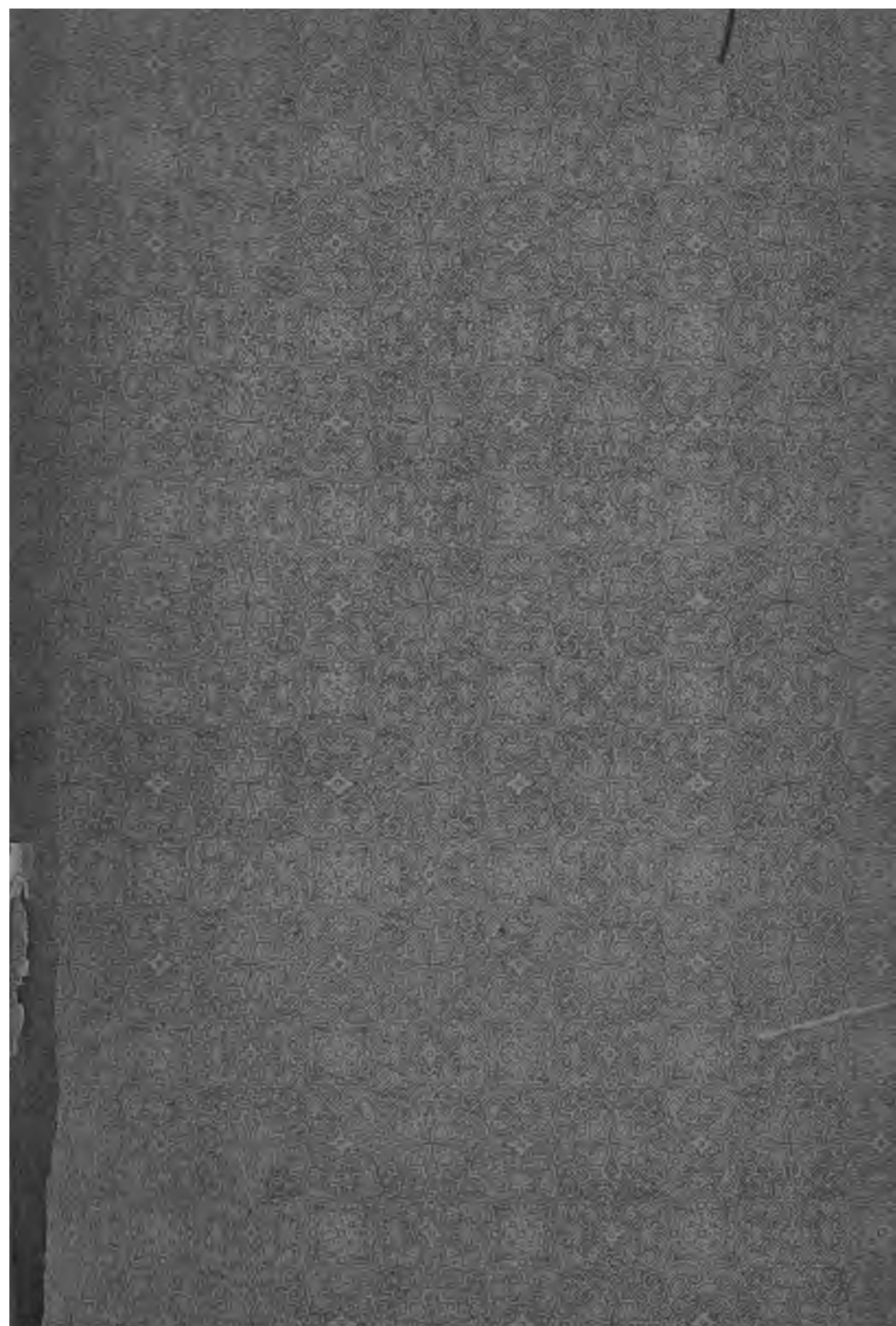
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THE YEAR BOOK
OF
RAILWAY LITERATURE

VOL. 1—1897.



COMPILED AND EDITED BY
HARRY PERRY ROBINSON

The Railway Age

CHICAGO.
1897.



Preface.

The object of the publishers of the Year Book of Railway Literature is to put annually into permanent form all papers or addresses on the public relations of railways, appearing or being delivered during the year, which seem to have enduring value. The first volume of such a publication must necessarily be in some respects open to criticism. It is probable that articles have been omitted for which a place should have been found. It will also be noticed that matter is included which was published before the beginning of the year 1897. The publishers believe, however, that as the volume stands it has unquestionable value. Moreover, that value will be cumulative with each succeeding yearly volume.

Satisfactorily to meet the ends for which it was designed, it was especially desirable that the Year Book should be fully and intelligently indexed. Attention is called to the index to this volume, which has been compiled with a view to making as accessible as possible all matters contained in the various articles bearing on the greater problems which confront railway companies to-day—such problems as are connected with pooling, employes and their wages, falling rates, traffic associations, two-cent passenger fares, taxation, the capital invested in railways and its productiveness, etc., etc. The index is designed to be as helpful as possible to the seeker for information on these and kindred topics.

Thanks are owing to the authors of the various papers for the assistance which they have rendered to the editor in the preparation of their matter for publication, and also to the publishers of the *Forum*, the *North American Review*, the *Engineering Magazine* and the *Railway Magazine*, for permitting the republication, from their pages, of copyrighted articles. Their courtesy is gratefully acknowledged.

H. P. R.

Table of Contents.

	Page.
RAILWAY POOLS, THEIR EQUITY AND PUBLIC VALUE. By GEORGE R. BLANCHARD, Commissioner of the Joint Traffic Association. (Republished from the <i>New York Mail and Express</i>).....	1
I.—Governmental and Railway Tariffs.	
II.—Competitions Compared.	
III.—The Interstate Commerce Act.	
IV.—What Railway Pooling Is.	
V.—Railway Claims to Legislative Relief.	
VI.—Indorsements of Pooling.	
VII.—Foreign Railway Rates and Pooling.	
THE TRANS-MISSOURI DECISION. By GEORGE R. BLANCHARD. (Republished from the <i>Forum</i> of June, 1897).....	53
THE POOLING OF RAILWAY EARNINGS. By ALDACE F. WALKER, Chairman of the Board of Directors of the Atchison, To- peka & Santa Fe Railway Company. (Republished from the <i>Rail- way Magazine</i> of March, 1897).....	67
THE INDUSTRY OF THE RAIL. By E. B. THOMAS, President of the Erie Railroad. (Republished from the <i>Washington Post</i> of May 10, 1897).....	79
THE PEOPLE AND THEIR RAILWAYS. By E. T. JEFFERY, President of the Denver & Rio Grande Railroad. (An address de- livered before the Annual Convention of State Railway Commis- sioners, at St. Louis, May 11, 1897).....	88
AN ADDRESS TO RAILWAY MEN. By E. T. JEFFERY. (Deliv- ered before the D. & R. G. Department of the Railroad Y. M. C. A., at Denver, Colo., March 16, 1897).....	114
RAILWAYS AND THE PUBLIC. By T. B. BLACKSTONE, President of the Chicago & Alton Railroad. (Being extracts from remarks appended to the thirty-third and thirty-fourth annual reports to the stockholders of the Chicago & Alton Railroad).....	121
RAILWAYS AND THEIR REVENUES. By C. P. HUNTINGTON, President of the Southern Pacific Company. (Being extracts from the eleventh and twelfth annual reports to the stockholders of the Southern Pacific Company).....	136

TABLE OF CONTENTS.

RAILWAYS—A RETROSPECT. By M. E. INGALLS, President of the C. C. C. & St. L. and C. & O. Rys. (An address delivered before the St. Louis Railway Club).....	144
RAILWAY RATES AND EARNINGS IN KANSAS. By E. P. RIPLEY, President of the Atchison Topeka & Santa Fe Railway. (A memorial of the A. T. & S. F. Ry. Co. to the Legislature of the State of Kansas, 1897).....	152
RATE REDUCTIONS IN KANSAS.—	
I.—A letter by E. P. Ripley addressed to the Board of Railroad Commissioners of the State of Kansas, May 28, 1897.....	162
II.—A letter by W. H. Truesdale, Vice-President of the Chicago Rock Island & Pacific Ry., addressed to the same board.....	168
ON TWO-CENTS-PER-MILE PASSENGER RATES. By JAMES CHARLTON, General Passenger and Ticket Agent Chicago & Alton Railroad. (Being an address delivered before the Senate and House Committees on Railroads of the Illinois Legislature, at Springfield, Ill., March 31, 1897).....	177
THE RAILWAYS OF ILLINOIS. By DWIGHT C. MORGAN, Engineer of the Illinois State Board of Railroad and Warehouse Commissioners, with diagrams. (Republished from <i>The Railway Age</i> of June 4, 1897).....	199
AN ARGUMENT ON THE TWO-CENT-FARE BILL. By W. C. BROWN, General Manager of the Chicago Burlington & Quincy Railroad. (Delivered before a joint session of the Legislature of Missouri, at Jefferson City, Mo., on January 31, 1893).....	208
PASSENGER FARES IN IOWA. By W. W. AINSWORTH, Secretary of the Iowa State Board of Railroad and Warehouse Commissioners. (Republished from the <i>Iowa Capital</i> of February 6, 1897).....	224
THE RAILWAYS OF GEORGIA. By FRANK WELDON.	
I.—Railway Rates Keep on Falling. (Republished from the <i>Atlanta Constitution</i> of April 11, 1897).....	232
II.—Wages and Rates Fall Together. (From the <i>Atlanta Constitution</i> of May 9, 1897).....	240
III.—Railway Rates and Capital. (From the <i>Atlanta Constitution</i> of May 16, 1897).....	247
ARE AMERICAN RAILWAY RATES TOO HIGH? By H. T. NEWCOMB, of the U. S. Department of Agriculture. (Republished from the <i>Engineering Magazine</i> of June, 1896).....	255
THE RAILWAY PROBLEM. By LLOYD BRYCE. (Republished from the <i>North American Review</i> for March, 1897).....	266

TABLE OF CONTENTS.

vii

THE FLIGHT OF THE RAILWAYS. By ROBERT P. PORTER. (Republished from the New York <i>Sun</i> of January 21, 1897.).....	279
BUSINESS INTERESTS AND THE POOLING BILL. By ROBERT P. PORTER. (Republished from the New York <i>Commercial Advertiser</i> of February 4, 1897).....	286
THE SCALPING OF RAILROAD TICKETS. BY GEORGE H. DANIELS, General Passenger and Ticket Agent of the New York Central & Hudson River Railroad. (Being an argument delivered before joint committees of the New York State Legislature, at Albany, March 10, 1897).....	293
THE LIMITATIONS OF GOVERNMENTAL REGULATION OF THE RAILROADS. By JOSEPH NIMMO, JR. (Republished from the New York <i>Independent</i>).....	305
THE TRANS-MISSOURI DECISION.—	
I.—Opinion of the United States Supreme Court in the Trans-Missouri Freight Association case.....	314
II.—Opinion of the dissenting Justices in the same case..	366
THE RATE-MAKING POWER OF THE INTERSTATE COMMERCE COMMISSION. (Being the full text of the opinion of the U. S. Supreme Court in the case of the Interstate Commerce Commission [appellant] vs. the C. N.-O. & T. P. Ry. Co. <i>et al.</i>)..	398

Railway Pools—Their Equity and Public Value.

BY GEORGE R. BLANCHARD.

“Regulation is as essential to railways as to the public. In depriving the roads of the power to hurt each other they will be divested of the power to injure the public. . . . The roads endeavor to do by voluntary action what the Government has failed to do for them, and ninety per cent. of their efforts is wasted because the government withholds its sanction.”—Interstate Commissioner Schoonmaker, 1891.

“Combinations that do not restrain and monopolies whose constant tendency, during the long series of years, has been to bring producers and consumers into closer relations with each other and lessen the cost of living to both, deserve praise and support rather than censure and adverse legislation.”—Hon. Sidney Dillon, then president Union Pacific Company, North American Review, April, 1891.

I—GOVERNMENT AND RAILWAY TARIFFS.

The United States bonded debt November 1, 1896, was \$847,364,460. The railway bonds were \$5,641,000,000, about seven times greater. Legitimate and so-called watered railway stocks were roundly \$5,000,000,000 more, at par.

The annual interest on the national debt is about \$29,000,000 and about \$252,000,000 on the railway bonds.

President McKinley told Congress March 15, 1897, that the Government's gross receipts for its fiscal years 1894-5-6 were \$1,072,651,000, and that they were \$138,000,000 less than its expenses. The railway receipts in the same period were \$3,408,200,000, over three times as much.

The Interstate Commerce Commission's report for 1895

stated that \$890,000,000 of railway bonds were in default of interest, being \$43,000,000 more than the outstanding national bonds. These defaults increased in 1896. If the interest payable thereon averaged 5 per cent., and it was three years in default, such defaults would aggregate \$133,500,000, or about the same as the Government deficits in the same period. During the same three years railway dividends decreased \$22,000,000 more.

The president specially convened an association of the States, called Congress, to tell them that business confidence and the public credit required *increased* import tariffs to extend trade. The House concurred in his opinion by 84 majority.

Almost simultaneously the Supreme Court declared, by *one* majority, that an association of railways which had *reduced* transportation tariffs, should not agree even to that end or to aid their credits, or to secure the uniformity of charges which the Government maintains in its import, postage, internal tax, land and consular tariffs, and which is required in the collection of all national, State and municipal taxes, upon the ground that such acts would restrain trade.

Should this decision cause further serious depletions of railway earnings, interest and dividends, it would involve greater actual loss than to pass the interest on government bonds, and as much, or more, impair the national credit, because prosperity cannot return to the nation while increased disasters assail its largest material and financial interest. The reductions of American railway values in the markets of the world prove this, despite a reassuring national election. The prevention or correction of that railway condition lies as fully within the power and duty of Congress as to restore general business confidence by increased import rates, and when rightly understood it will secure public approval because the railways desire legislative aid only to the end that their impartial published tariffs, which are the lowest of the world, may be reliably observed.

If the Supreme Court opinion was soundly based upon the

laws, those laws must have been enacted through public misapprehensions which it seems essential to remove, and such amendments of law should be made instead, as will secure reasonable, impartial, public and stable transportation charges by the means found wise and necessary to determine, collect, apportion and disburse the governmental incomes, which, being smaller, touch fewer people.

The Government pays uniform railway compensation in large amounts for the like carriage of its mails and stipulated prices for the transportation of its troops and supplies, yet it does not plead that "competition" is lessened, "trade restrained" or its expenses are increased because it does not receive concealed rebates from those charges. If governmental officers accepted them they would be dismissed. Nor do those officers say that as the rates they from time to time ask are for the Government, they will exercise its power to compel open or secret cut rates or that they will divert their large business if railways do not concede for the State some or all of the irregular things done privately under guises called "competition." As the Government is the largest patron of the railways, its legal aid should be clearly given to put and keep all other patrons upon the same honorable plane on which it conducts its own business with the same carriers.

If the United States purchased the railways the Government would continue to so act as to its own traffic and would fix and enforce against all others, transportation charges found reasonable and made public, and such charges would not be secretly reduced. Conferences among parallel governmental lines would also be as essential then as now, to decide and announce their intricate rates and the changes in them required by law, by new and trade conditions and by those great legitimate competitive forces which are controlling and ceaseless.

Railway competition, as now understood, would then cease between parallel governmental carriers as it has between governmental custom houses, and, after the railway receipts had gone into one national purse, they would be as-

signed to the proper departmental revenues. These analogies represent not only the whole scope of present railway conferences or associations, but also the equality and firmness of rates intended to be secured by pooling.

The legal, unifying and police powers of the Government would then promptly remove all obstacles to uniform charges over its lines, as in its postal management and rates, whereas the impediments which confront the railways are vastly greater, and increase instead of diminish, because due power to regulate them is not only being withheld but lessened. New railway lines, consolidations and combinations, carriers' antagonisms, man's faults, the rivalries of States, cities and districts, the constant competition of water routes and rival foreign countries and markets, the wrongful depletions of reasonable rates by weak carriers and strong shippers, and the struggles and reprisals which ensue, compel diverse corporate policies and create recurring disturbances, which are not only uncorrected, but are growing.

The pooling plan of railway co-operation is therefore needful to secure the best public and railway accord, and it is but the counterpart and equivalent of what governmental management would be, yet it is forbidden by law and questionable decisions, and a situation easily made better grows nationally worse.

If the Government purchased only the Union Pacific Railway under the pending foreclosure, it could only announce its rates upon the large competitive traffic of that great system after the conferences and the methods that company now avails of. With all its power, the Government could not maintain independent rates on that one line and secure rival traffic for it unless its private competitors made the same rates and maintained them with equal honor and inflexibility, nor can that railway do so now. This has been found true of the competition of government railways with private lines in Europe.

If the transportation confusion caused by the Trans-Missouri decision induced the present Congress to appoint

a governmental commission to consider and report upon the best and most equitable means to first determine reasonable rates, to change them as controlling circumstances might require and to thereafter cause them to be observed as so fixed and changed, in order that discriminations should cease, there is no doubt that such a commission would, in all essential particulars, recommend adherence to the usage of the present traffic associations, which represent the condensations of intelligent experience and fairness.

Such a purchase might therefore be desirable as a stop to congressional theorizing upon competition, by bringing senators, representatives and governmental officers to consider the alternative which all competitive railways must now contemplate throughout the country, *i. e.*, to observe the Interstate Commerce Act and thereby surrender their competitive traffic to more plastic private rivals, or to keep their shares of business by the methods employed by the latter. They would perhaps heed advice then which is so far ignored and doubted.

When the Government publishes import tariffs designed to secure revenues adequate to its needs or to induce private capital to enlarge national trade, it assures to the world their impartial and unabated collection. Any instability in those changes greatly disturbs trade. If the railways simultaneously file with the Government reasonable transportation tariffs which are equally or more calculated to give effect to the same national policy, and which are intended to be stable, upon what justifiable grounds can the nation deny the aid of legally regulated contracts and pooling to collect and retain their due charges, as being the only plans which have anywhere proved effective stops of illegal depletions of reasonable rates, which, however small, are always discriminations?

That one is a governmental and the other a corporate tariff is not an honest or just reply, and no government but ours so illogically answers its carriers. While, therefore, our legislators condemn railway discriminations, they more dis-

criminate by withholding from railways any measure whatever of the protection they give rail mills and others, yet whether national revenue, credit, labor or commerce be considered, the railways are the largest factor in those public purposes and results, and are entitled to equal or greater consideration.

For illustration, the existing import tariff may be justly increased on some articles by the schedule now pending, but if the railways should fractionally advance their rates on imported articles it would be characterized as unjustifiable, monopolistic, extortionate, etc., although both increases might be proper, especially in instances in which privately reduced transportation rates might neutralize increased import rates.

However that may be, if the Government controlled both the railway and customs charges, it would inflexibly and uniformly charge and retain both schedules as published. Any other governmental course would provoke just public indignation. It is an equally desirable and just consummation when the railways collect one of those charges. If, on the other hand, it is better that only the transportation element of commerce be capricious, concealed and preferential, because that condition is a desirable requisite of so-called "competition," should not rival customs collectors also make different import charges at competing ports of entry, and why should not the whisky tax be lower at Peoria than in North Carolina? Why should not postage stamps be sold cheaper at profitable offices like New York to large daily users of the mails than to infrequent letter writers at small offices conducted at a loss? And why should letter postage be the same from New York to both Brooklyn and San Francisco?

Next, it is widely claimed that transportation is a governmental function delegated in part to corporations, but remaining subject to national control. Upon that farther ground railway companies seem entitled to those reasonable delegations of power which would be necessary to enable the Government to secure the observance of like charges under like circumstances.

While we thus argue that governmental and private railway policy should be alike national, public, impartial and enforceable, carriers also concede that corporate as well as governmental railway management should be subject to proper national supervision.

If the Government now owned the railways, the disquieting defaults of interest on their bonds, the lessened returns on their legitimate shares, the constant impairments of their gross and net revenues, especially from false "competition," would combine to the detriment of their physical condition and safety as well as to injure their fiscal obligations everywhere, and those disturbing conditions would then doubtless have been set forth by the president as needing national corrective action as much as the other financial urgencies to which he asked consideration. If such railway retrogression nevertheless continued under governmental management it would have been finally necessary to meet it by direct appropriations or by diverting other governmental incomes to such deficits. Either of those courses would be more expensive to all the people and more unjust in application and effect than to charge and maintain adequate rates payable by the actual users of the railways.

Railway owners and managers are confronted with the same problems, but have been denied adequate powers to meet them. Therefore, they ask governmental sanction to a policy itself could not escape from. To answer that railway proprietors and managers must take care of themselves, yet not permit them to do so legally, is the retort of theory or hostility, is not just and is not applied to any other great national interest.

As the United States do not own any railways, these premises must be sustained by proofs drawn from other nations.

In 1874 Switzerland invited Austria-Hungary, Belgium, Germany, Italy and the Netherlands to confer touching competitive international railway tariffs in order that like rates—bills of lading, etc., might prevail thereon via their rival

routes and frontiers. Further conferences in 1878, '81 and '86, in which private companies participated, considered the competitions of the Mediterranean and North Seas and the Danube, Rhine and other rivers, as well as that of their own railways, resulting in an agreement at Berne in October, 1890, which was subsequently ratified by all the participating nations and made effective January 1, 1893. Under that compact, undue competition was ended, not only governmental, but private rights were conserved, and public, stable and reasonable charges were announced upon which to base competitive national and international traffic interchanges. Had those governments and their private railways acted upon the erroneous theories of competition held by inexperienced and hostile opponents of American railways, they would not have thus associated or agreed, but would have fought the carrying struggle to a finish. Private corporations would have been crippled by their own governments and the latter would then have continued their strifes, depleted their several national revenues and involved their treasury budgets. The railways would have deteriorated and commercial instabilities and discriminations in rates would have continued or increased. Can there be any question which is the juster and wiser public policy?

The faults of the Interstate Commerce Act and the effects of the Supreme Court decision should be less deplored if the present discussion brings as wise and permanent legislation as that concluded at Berne. Otherwise, their fruits will grow more grievous to fair traders and carriers and will more incite and less regulate the evils of concealed discriminations, which no laws and no railway unity have ever yet corrected in any country except by pools.

Interstate Commissioner Schoonmaker said:

"The lack of affirmative legal authority for such associations, the bad faith often exhibited by some of their members and the inability either to restrain or punish delinquency have operated in another tendency—the tendency toward consolidation."

Moreover, should pooling be authorized by law, and be thereafter found to antagonize the public interest, prompt repeal or amendments or enlargements of the powers of the Interstate Commerce Commission would protect the people.

The argument of these articles is not that legislation should sanction a past railway policy which may be finally adjudged in conflict with law, but it holds that Congress was well advised in 1886 to sanction pooling; that its prohibition in the Interstate Act was a public as well as corporate misfortune; that the Anti-trust Law was not intended to prohibit fair agreements not designed to raise prices or create monopolies, and that it was not intended to apply to railroads. Inasmuch, however, as doubts have arisen upon some of these points, it is now due to every interest involved that they be removed by affirmative legislation. The argument also represents only the writer's views.

Much of the legislative indisposition to affirm pools is based upon widespread misconceptions of railway competition, which will be therefore considered next.

II—COMPETITIONS COMPARED.

When the term competition is applied to purchasing and selling transportation as it is to buying and vending goods it is a misnomer, because historically and instinctively the word conveys to most minds thoughts of bargaining and concession.

Buyers seek better terms than sellers first ask by inviting price reductions, easier terms of payment, etc., and sellers whose capital, manufacturing facilities, control of specialties, rental, etc., differ, may, in order to divert buyers from known and unknown rivals, sell at dissimilar prices adapted to market conditions, the proportions of cash or notes offered in payment, their experiences with buyers' responsibilities, and the profits upon the entire bills sold. All this is proper, but it would not be proper for the same buyers or sellers to barter and bargain in the same ways for different railway rates, nor would it be proper or legal for rival railways to concede

preferential rates varied to accord with each agent's estimate of each merchant's credit, shipments, etc., or with the various capitalizations, dividends, distances or facilities of each line.

Competing vendors in market stalls or on wagons openly cry their own and decry rival wares and misrepresent each other's goods and methods, but variable rates, fares, bills of lading and tickets, founded on misrepresentations and discriminations, must not be peddled publicly from railway wagons or privately in railway offices.

Yachtsmen "compete" for prizes with presumable honesty, but a crew may be corrupted, a yacht purposely fouled or its spars weakened, when it is not "competition," because the contest may be decided by fraud. The same principle holds true in athletic games, horse races, prize fights, etc. If the judges in competitive exhibitions of machinery or art sell their awards, it is not "competition" more than it would be if one railway procured the derailment of its rival's trains or misrepresented the time and facilities of its own or other routes. Prison laborers do not fairly compete with honest toilers, nor would railways be justified, because of labor competition, in reducing the compensations of their enginemen to the wages paid convict engineers.

If a yacht owner, trade or art exhibitor or athlete violates the rules of his guild in its contests, he is debarred from further competition and publicly denounced, but if the fair rates and rules governing the far more important public functions of transportation are violated by a railway which aided to make them, that railway is given increased patronage on trade exchanges which would dismiss their own members for lesser infractions of their fair charges and rules. This is not competition, but a reward for illegal preferences.

It is not, therefore, true competition when one or more railways unequally alter proper public rates or rules, to which they have previously assented, and which other and more judiciously managed railways seek to observe in furtherance of law and the public interest, as the great majority of railways sincerely desire and strive to do. Nor is it true

competition when strong and well-meaning carriers which have lost their business to lax rivals take some legal chances to regain and keep it, because if they waited for the law's inefficient help in such instances all their rival business would be lost, perhaps permanently

Again, if one railway company offers a tariff rate, another reduces it unreasonably and other carriers offer further rebates therefor in varying ways, it is clear that if the first rate was reasonable the last one is unreasonably low, and that such devices, which are not competition in any sense, involve loss to the first shipper and the last carrier. Such conditions constitute preference, discrimination, waste and bankruptcy, and mean that fair rate standards should be restored.

Assume again, one railway sturdy for its legal rates pitted against another pliant with concessions from the same rates, and two shippers of diverse business standards, and that the yielding railway grants the persuasive large shipper unknown rebates. In such strife both railways may be ruined, one because it loses its business, the other because it loses its profit, and one merchant is sure to be ruined, but the receiver of rebates will survive and will control his kind of business at the point where the rebate is granted. This is not competition within any honorable meaning. Nor, even if it be modern law, is it sound business sense or good public policy to say that to rightfully and rightly place both of said railways and both of said merchants on equal and equitable conditions can be a restraint of trade.

When one of those two merchants fails, he retires from such strife. If but one of those two railways fails it must continue in business, and the thoughtless say it is then best prepared to take the largest competitive traffic at the lowest rates, to which other carriers must conform or lose their traffic, being the only trade in which a bankrupt makes values for solvent rivals and the only business which it is properly believed may be increased upon insolvent capital.

In no sense is this true competition, and railway reorganizations based on such false conditions invite renewed fail-

are, for they induce just reprisals and the return of the business they thus divert from others.

Again, if all railways gave but one shipper one cent per one hundred pounds advantage, he would ultimately control the cereal markets of the nation. So would he if one railway at each large shipping point granted him that preference, while all other railways thereat stood firm for right rates and rules for him and others. The result differs only in degree if the same advantage be given by one or many railways to five shippers at the same or different points who may then attack each other until the survivors are fewer. This is not competition, but assault and unendurable favoritism. The protection of right always requires the restraint of wrong, especially in transportation, wherein both protection and restraint must come from railway co-operation which is now interdicted, or from law, which has so far denied its sanction to the best plan for both.

Further, the merchant who reduces prices affects only his rivals in his locality, while railways which reduce through rates are legally required to make their interstate charges, say from Chicago to Boston, the maxima between numberless intermediate places. This also is not competition, but the effect of the Interstate Act, because the offending line may not reach points on other lines which are, nevertheless, affected by the reduced through rates made necessary via all routes by the injudicious action of perhaps only one route.

Finally, on this point, charges thus varied are illegal and punishable by fine and imprisonment. The Interstate Commerce Act requires that the actual rates shall be published and charged alike to all; that they shall be not reduced without three days' or raised except upon ten days' public notice, and that such rates shall not be "*more or less*" than the tariffs filed, thereby stipulating that railway competition *shall* differ from trade competition.

The minority opinion in the Trans-Missouri case presents this condition succinctly and clearly as follows:

"That the Interstate Commerce rates, all of which are

controlled by the provisions as to reasonableness, were not intended to fluctuate hourly and daily as competition might ebb and flow, results from the fact that the published rates could not be increased or reduced, except after a specified time. It follows, then, that agreements as to reasonable rates and against their secret reduction conform exactly to the terms of the act."

For these reasons, as well as for the convenience, certainty and restfulness of trade, all merchants not seeking rebates would, for example, approve a rate of twenty cents per one hundred pounds from Chicago to New York and such regulative legislation as would sustain that rate undeviatingly until as publicly altered, rather than indorse legal decisions or railway practices which stimulate a concealed rate of fifteen (15) cents for large shippers, when the published tariff is twenty (20) cents. They well know that such vicious discriminations resemble trust methods and render commercial competition impossible except between controllers of vast capital, who may impoverish smaller traders, and, controlling warehouses full of traffic, tender it in trainloads to pliable railways or those which lack business, else shift their large tonnages from line to line or unite with other shippers to more compel preferential rates or conditions. It is regrettable to say that they too often obtain them. By such means some shippers become dealers in diverted railway earnings as much as or more than in their own merchandise and thereby grow the stronger to exact further railway concessions, to stipulate purchase prices to producers and sale prices to consumers, and perhaps use their combined rebates and capital to further control values on trade and financial exchanges.

The real purpose of the Anti-trust Law is thus reversed. Not being, as the railways contend, meant to apply to them, it is thus far adjudged that it does; yet being clearly applicable to trusts, the latter escape its effect and grow stronger from large transactions between themselves and those carriers which grant them special advantages. That decision more encourages them to this course and restrains trade by limiting it to the favorites thus created.

Reasoning from these conditions, it cannot be too often or strongly argued that however much all competitive railways but one may observe common and legal rates, the strongest and best disposed companies must succumb to the objectionable conditions forced upon them by the weakest or worst competitor physically or morally. This also reverses commercial and trust conditions wherein the stronger always control.

As a further illustration, the Government's postal business would be impaired and disorganized if railways, express companies and house to house carriers cut the postal rates 20 per cent., yet if real competition is the legislative desire and intent, why should they be restrained from such carriage by law as they now are?

As Commissioner Schoonmaker well said:

"A rate made by one line on a particular traffic must be the rate of all other lines to share in the business."

He also said:

"And this pernicious power is the creation of law, and is protected by the law upon the antiquated and once respectable theory, but now fully demonstrated fallacy, that unrestricted competition among railroads is a public benefit."

All such rate-cutting methods simply sell transportation awards to the lowest and not the highest bidders, and are not, therefore, proper competition more than are auction sales of pawned, bankrupt or damaged goods legitimate business rivalry. It is the control or extinction of true carrying competition and the destruction of all its legitimate rules, functions, agencies and honorable standards.

In these facts and illustrations lie answers to those who say the railways have only themselves to blame for the unreasonable reductions of rates and the untoward conditions of which they now complain.

Based on these unassailed premises, competition properly means that when various persons seek a coveted consummation or patronage they shall be governed by those rules in each branch of endeavor which apply equally to all honor-

able contestants therefor, and which experiences have proven fair and essential to enable the best man, horse, yacht, machine, picture, shipper or railroad to win under equal conditions.

Comprehensively, justly and legally considered and applied only to railways, competition means due adjustments and readjustments of rates to conform equitably to those causes which properly control or affect them—such as rivalries with oceans, rivers, lakes and canals, competing markets which distribute, consume or reship, and relations of localities, etc. Economies in cheaper rails, coal, etc., longer and more numerous trains, lower grades, improved terminal facilities, better station houses, more and safer tracks, celerity of service, etc., are also elements of legitimate emulation calculated to transfer and increase business and which affect lower rates thereon. This true competition will, therefore, never cease between any rival lines.

When all these justly competitive forces have been duly expressed in reasonable and uniform rates, fares and rules, each and every violation of them, however small, especially by those who helped to make or who indorsed them, constitutes a discrimination, is dishonorable competition, and should not longer receive even negative trade or national sanction.

Various Interstate Commissioners have strongly confirmed these views. Judge Cooley said:

“How distinctly it is seen here that it is utterly impossible to judge of railroad competition and its effects, its usefulness and its mischiefs, by comparing it with competition as we encounter it in other lines of business.”

Hon. Martin A. Knapp said:

“Deprived of special and exclusive rates, an advantage far more odious and powerful than exemptions from taxation, those trusts are shorn of their strength and divested of their supremacy.”

Judge Patterson, who introduced the pooling bill of 1895, said:

“This preferential system throughout the country is gradually destroying the small and enriching the large shippers,”

The great English Commission of 1882 said:

"While committees and commissions carefully chosen have for the past thirty years clung to one form of competition or another, it has, nevertheless, become more and more evident that competition must fail to do for the railways what it does for ordinary trade."

It also said:

"Reliance upon competition between railways to regulate rates and maintain them upon a fair basis and to prevent unjust discriminations will have to be abandoned as a failure."

Hons. A. G. Thurman, E. B. Washburn and T. M. Cooley said in their joint report of 1882:

"It is a state of things that, like a war between nations, from its very destructiveness cannot be a normal condition, but must speedily terminate in peace or disaster."

They further said:

"The mere statement of these results is sufficient to show that this is not what in other business is known and designated as competition."

A distinguished United States senator said in 1887:

"Competition of railroad transportation differs from every other kind of competition in the world. . . . It is not competition in trade. The railroad buys nothing of the producer; it sells nothing to the consumer; it simply carries; it distributes."

The chief of statistics of the United States said:

"Success waited upon intrigue and false representations. The freight agents deceived the merchants, and the merchants deceived the freight agents."

Senator Cullom's committee said:

"If competition is to have full sway, as it does now, the constant changes it would necessitate would render it impossible to maintain fixed rates."

It further said:

"Competition does not prevent personal discrimination, for the evil is most conspicuous when and where competition is most active."

Judge, afterward Senator, Howe said:

"Competition (meaning improper competition) has done more to monopolize trade or secure exclusive advantages in it than has been done by contract."

The Interstate Commerce Commission said in its first annual report:

"Excessive and unreasonable competition is a public injury."

Why the Interstate Commerce Act has largely failed to meet and correct these conditions will be considered next.

III—THE INTERSTATE COMMERCE ACT.

The conditions which led to the Interstate Act were dealt with in the Windom report of 1878 and the Reagan bill of 1879, and were reported upon fully by the Cullom committee in 1886, which held the railway system to eighteen (18) counts, eleven (11) of which related to discriminations, the others to undue rates, capitalization, management, classification and engaging in extraneous business. Time has nonsuited the last seven (7) complaints.

That report anticipated what experience has fully confirmed, when it declared:

"That a problem of such magnitude, importance and intricacy can be summarily solved by any master stroke of legislative wisdom is beyond the bounds of reasonable belief."

The Interstate Act has, nevertheless, secured more publicity of rates, lessened open rate wars, equalized long and short haul rates; has exercised beneficial warning or police powers, silenced much unjust clamor against railways, has been mutually educational, and has been judiciously administered, but as secret discriminations and open wars have continued the law has failed in its chief object.

Hon. T. M. Cooley said, when chairman of the Interstate Commission:

"The law was best observed at the outset, but in a few months it began to be noticed that many persons in railroad service were giving more attention to contrivances for evad-

ing the spirit and intent of the law than they were to obeying it.

"Any misconduct of this sort on the part of one road is imitated at once. . . . In the end the account of profits and losses shows gains by no one. It is all loss, and all the roads share it."

It is due to the law, to its administrators and to frank discussion, to admit much of this charge against the carriers as a whole.

Nevertheless, this relapse proceeded mainly from the national refusal to confirm the only plan which was thus commended and which, less than a year before, had enabled strong and sincere carriers and others less strong in purpose or facilities, to equally observe reasonable and common rates between leading points, by giving all a joint interest and power to resist demoralization by agreeing to divisions of tonnage or money, or both. The Interstate Act followed foreign precedents, but only to the point which they all found most essential to the fulfillment of prior requirements.

Mr. W. M. Acworth, author of *The Railway and Traders* (London, 1886), wrote (1892):

"Your Interstate Commission was largely modeled on our Railway Commission . . . since 1873, and the undue preference clause of your act to regulate commerce is copied almost verbatim from the English act passed as long ago as 1854."

There *our* law unwisely stopped. It was as if consulting physicians had adopted the discredited cures known to earlier science, but discarded the latest and best discovery for the disease treated and then blamed the patient for his relapses; or, as if Congress had failed to enact the leading recommendations of army and navy experts, which were undeniably for the public welfare and security.

This primal error made the other mistakes of the act more marked. Railway officers and patrons otherwise disposed cannot be legislated into mutual rectitude, especially when their gains are thereby lessened. Even the divine law has not done that in any calling.

The act did not intend to protect railways, and was therefore unjust. To stimulate "competition" it exempted parallel water carriers. It regarded the railways as alone responsible for all the conditions condemned, and devolved their corrections upon them alone, although it applied theoretical penalties to shippers who procured preferences. None of its provisions were remedial, nor did it create mutual interests between government and carriers. It held to the perversion that railway warfare is synonymous with peaceful business competition. It fostered the fallacy that while rates must be alike via one railway, it was publicly desirable and should be made legal if they were different upon rival railways, or, elsewhere, that, however different in facilities, rival railways could obtain equal rates. Finally, it has encountered legal reverses which have induced laxity in its observance. These failures did not proceed from the administration of the act. Here, more than in foreign countries, because of our great area and more complex conditions, mere mandates against discriminations have failed because the principle of giving the parties affected a common interest to obey the law was disregarded, and because the act, as it stands, does not, and cannot, protect upright carriers or shippers against the devious encroachments of others less so.

Railways do not pay rebates unasked, and the solicitations for them are incessant. Government has not helped the railways to educate forwarders to regard freight rates as firm as are postage or import rates. The importunities of some shippers, their adroit intimations as to what other carriers will concede, and their own suggestions that they may concentrate or divert their shipments unless their wishes are conceded, all devolve upon some companies not only constant and strong moral opposition to them and to the carriers disposed to yield to such persuasions, but also losses of business and the protection of their tariff-paying forwarders. That such resistance sometimes gives way is therefore true, because no company will allow large and permanent depletions of its business when it can be retained by like rates. When, for example, a new

railway opens, former reasonable rates are clearly more justified because more railways share the traffic. The newer line, being usually weaker, offers reduced rates to divert business from older routes, and shippers withhold freights from the latter to induce or compel them to like or greater concessions, and they usually succeed.

Favored shippers oppose all methods to defeat rebates, weak lines will not remain without business and the strong lines will not permanently lose theirs. Devices and concealed rates therefore inevitably ensue, and are illogically urged as desirable "competition" and public benefits.

If, further, the ten (10) lines from Chicago to New York each openly published different public grain rates ranging from twenty (20) to twelve and one-half ($12\frac{1}{2}$) cents per one hundred pounds, each rate would be legal to its line, but the result would be as discriminating to trade and as hurtful to adjacent and intermediate points as to make such different rates secretly.

Per contra, if they all held to equal rates and conditions, some of them could not secure the shares of traffic to which they deemed themselves entitled by their charters and their necessities for business and earnings.

Ten years of such actual practices and results since the act, clearly predicted before its passage from the amplitude of home and foreign experiences, have again demonstrated that it is for the public interest that due and reasonable rates be upheld by legally empowering some lines to concede portions of their traffic to others which will accept it, especially while shippers may act or combine to shuttle their traffic from line to line and divide the proceeds of *their* combinations to defeat such due rates.

It is clearly more desirable to practically regulate than to theoretically increase such misnamed competition, but its due regulation cannot be accomplished without the aid of law or the removal of its prohibitions.

The railways therefore ask that if some lines concede parts of their tonnage or earnings to other companies and

both they and disinterested shippers agree that such method will best resist the persuasions of some shippers and the wavering of some railways, joint contracts for such desirable mutual purposes should be legalized. This policy will sooner make weak lines and shippers stronger, all forwarders may continue to use the routes they desire, and all lines may make economies which will better justify the low present charges and the betterments and extensions of their facilities. If smaller shippers assent that their freights may be used to so equalize the joint tonnage because they thereby secure the desired parities of rates with large forwarders, which are their right and necessity, it is a potential and conclusive argument. The largest shippers now get the best terms, while the smaller ones most need them.

It is because the Interstate Act has thus and so far failed to deal adequately with such discriminations and their remedy, that the railway contention for pooling seems easily understandable and is unanswerable. If the Government reserves its approval of rates it should also aid in their uniform collection. Whatever rates receive its sanction should receive its strong support, like its own tariffs, its arbitrations, its treaty obligations, its international postal union, etc. Government is justly jealous of its faith in all those respects, and should be equally so for its carriers, because they have done, and are doing, more for its extension and power than all those other agencies. If, therefore, the carriers supplement the railway reports of Senatorial and House committees and National and State commissions and trade bodies, as well as those in Europe, with pleas for a mere trial of the system commended by all those authorities, and further propose to submit their data, contracts and rates to governmental review and approval, upon what defensible grounds can the national legislature longer rely upon only the present inadequate act and answer us in effect:

"It is true you publish ostensibly legal and reasonable rates; collect them if you can, but we think competition—as we understand it—should go on unregulated and preferen-

tial because otherwise trade will be restrained and competition stopped."

The reasonableness of rates is now rarely questioned and hardly touches the present discussion. Mr. Nimmo said:

"During the year ending December 31, 1893, only sixteen cases came to a formal consideration and hearing. In only one of the cases decided was the reasonableness of the rates called in question, and in that single instance the claim was decided to be not well founded."

There are not less than two million freight rates and passenger fares in this country applicable to interstate traffic. When this enormous aggregate is considered, that hundreds of transactions occur annually under each rate or fare, and that complaints to the Interstate Commission have not been one one-hundredth of 1 per cent. of the transactions related to these tariffs, such striking facts should challenge legislative attention and prove that the wrongs falsely charged to railway associations and pooling exist in the minds of unintelligent agitators or opponents, and not with patrons who have actual transactions with the railways.

Some assume that the railways create all their own difficulties and that only their mutual determination to observe joint tariffs is required. This is true if by law or agreement they all will observe like rates and conditions; but no laws and no agreements are universally observed in any business or between nations; hence the multiplicity of contentions and courts, and all such critics fail to realize the essential differences between railroad rivalries and environments, wherein the weakest or worst company may, and does, make rates for the strongest and best.

Stephenson, the younger, therefore said to a committee of Parliament:

"What we ask is knowledge. . . . All we ask is a tribunal that is impartial, and that is thoroughly informed, and if impartiality and intelligence are secured, we do not fear the result."

We believe that the pooling clauses of the act of 1887

were not enacted because our legislators were not thoroughly informed. A distinguished senator told his colleagues in the Senate debate of 1887 of the "utter and lamentable ignorance of what pooling contracts were."

We will endeavor to explain them in the next article.

IV.—WHAT RAILWAY POOLING IS.

Pools usually mean the sales of shares in ventures which remain to be decided by chance or fraud, while railway pooling means certainties of which the public has full and published foreknowledge, and in which only the railways incur the possible hazards.

Railway pools do not specify rates, because they cover fixed terms during which changes in rates may be made necessary by law, by altered trade conditions, by rates at other points, etc. The rate-making function and agreement is therefore entirely distinct and separate from the pooling agreement.

Senator Platt (of Conn.) said in 1887:

"What is a pool? It is simply an agreement between competing railways to apportion the competitive business; that and nothing more."

This being true, a legalized pool agreement would read substantially as follows, in all respects which touch public interests:

"We agree to report to a joint officer and always at the tariff rates, weights and classifications applicable thereto as from time to time legally published, filed and approved, all tonnage carried by us between the specified points.

"After each company shall have retained — per cent. of its gross receipts on its own tonnage, the sum of the remainders shall be divided between them monthly in proportions agreed or arbitrated.

"All questions of difference hereunder, except those of law, shall be decided by arbitration."

Two unassailable transportation principles uphold such agreements and attention should be drawn thereto at the outset.

Some standards of rates *must* be reasonable, and being so fixed, approved by the Interstate Commerce Commission, legally announced to forwarders before shipments and uniformly collected from consignees, the railways then challenge proof of any possible public wrong from the division of such legal proceeds between them as they may agree. Only the rates affect the public interest. Their apportionment is not a just public concern any more than the proportions in which railways share the cost of constructing and operating and the incomes from their joint double tracks, union depots, belt lines, etc.

Pools are, moreover, for the public welfare, because they stop solicitations for rebates and the payments thereof; they transfer unconsigned or assenting tonnage first, or, if not that, money, to the carriers in deficit, from the acknowledged overplus of their associates, who are, therefore, the only parties who can be injured; they account for all the included traffic at the tariff rates, and if rebates are nevertheless paid which produce an excess of any carrier's due tonnage, the company thus unworthily securing such excess must pay not only the rebates, but also the excess tonnage or money balances to its associates.

Pooling, therefore, stops rebates because each party thereto shares the proceeds of observed legal rates and enjoys the comforts of management and peace with law and conscience which good faith, thus reinforced, brings to both associates and rivals.

The agreeing carriers also share the included competitive traffic in substantially the proportions of their previous carryings, while shippers continue to choose their routes, because only the traffic of assenting forwarders is used for tonnage equalizations. Pooling combines the facilities of the agreeing lines as if they were one company organized to carry the tonnage of a community as impartially as they would that of one great firm. If one railway charges all the members of one firm alike, it is also the best corporate and national policy for all companies to charge like rates between the same points to all firms and persons.

Pooling secures stable rates, not only at traffic centers, but at those local points which depend thereon, whereas small shippers at both central and tributary points now incur two disadvantages; they can neither sell to nor compete with the large shippers at large points, nor can they ship against them with equal profits from small points where the rates are usually held firmly.

Pooling gives the public the united facilities of all lines at times of calamity or emergency.

Proper emulations are stronger under pools which assure equal rates, because only improved facilities, speed, courtesy, and promptness attract and retain business thereunder, whereas rebates are now more relied upon.

Pooling simply seeks to conduct competitive business upon the impartial rates and rules observed at local points, where applications for preferential cut rates are not entertained, but where applications for public reductions of rates are considered and decided after conferences and usually upon the merits of the causes.

Pooling secures uniform inspections for the detection of those false weights, misdescriptions, etc., by which honorable merchants may be defrauded by others who are not, and thereby further tends to put all patrons upon equal shipping conditions as well as rates. There were 135,000 cases of misdescription by forwarders detected by the railways at three seaboard cities last year on westbound through freights.

The following facts sustain the foregoing averments:

Former pooling actually diminished rebates, and would have stopped them before now had it been so legalized as to justify long term agreements. If honesty was not always observed under pooling, it is no argument against it. It did not cause bad faith, but checked it, and discriminations would have increased without them. No laws have stopped conquests, reprisals or crimes among nations or persons, therefore union and laws are the more necessary. It would be as proper to allege that the customs laws have failed because undervaluations, defalcations and smuggling continue. Im-

porters who undervalue goods to evade the customs laws will misdescribe their wares to subvert uniform and just transportation charges. The Government uses all its power to stop such frauds upon its rules and revenues, but the railways can rely only upon separate action if the recent decision is maintained.

Under pools some tonnage was transferred from road to road, but not to the extent conjectured. In the last year of the eastward pools from Chicago, St. Louis, Peoria, Cincinnati, Louisville and Indianapolis, all the tonnage changed from one route to another at all these points was but 2.2 per cent. of the total and without a protest from shippers. The cash paid by all companies therefrom to each other in money settlements did not average nine (9) cents per ton, whereas cuts in through rates are usually fifty (50) cents per ton, or more. Of about \$12,000,000 pooled freight earnings, less than \$300,000 changed hands, and over one-half the last amount was returned to those who paid the excess balances, because to get their money back they reduced their tonnages and not their tariff rates. Not a shipper or consignee was harmed by any of these results.

No American pool can be cited which advanced rates unless to restore unjustifiable rate-war reductions. When the trunk lines were organized in 1877 the average of the eastward and westward tariff class rates between Chicago and New York was seventy-one cents per 100 pounds. When they discontinued pooling in 1886, it was under fifty cents.

None contend that pooling has fostered, or that its legalization will increase discriminations, because its purposes and effects are always to minimize them.

Nor has pooling restricted tonnage. The westward tonnage from New York City proper under the above-named pool was 716,000 tons in 1877 and 1,415,000 tons in 1893, and although New York was most of that time pooled, while Boston, Philadelphia and Baltimore were not, the New York tonnage indicated the greater relative increase. Nor has pooling restricted any just competition created by the laws of trade,

the rivalries of seas, lakes and rivers, or those betterments of transportation conditions which cheapen rates and attract traffic reasonably to the lines bettered. Under pooling each company preserves or increases its individual strength, which is the true railway competition.

Then, upon what defensible grounds has pooling been legislatively antagonized? It is idly averred that pooling will stop competition, and is meant to secure dividends for watered stocks. It has even been recently said in the national Senate that it will consolidate American railways into one gigantic corporation having about twelve thousand millions of bond and share capital, which will advance rates.

It is difficult to discuss such screeds seriously. To assume that Oregon and Florida railways will pool with each other; those in Florida with one or more in New Hampshire; that the Philadelphia & Reading Railway Company will pool with the Mexican Central, or the Boston & Maine with a Los Angeles line, may be used in hostile heat, but it is not intelligent, because no such instance is on record, or is contemplated or possible.

The unintelligent assertion is repeatedly made that pooling will enable and stimulate railroads to combine as a trust, whereas all forms of pooling ever suggested have been the opposite of trusts.

Trusts are antagonized because their methods are publicly believed to be secret, extortionate, that they combine capital to fix and control the prices of their products and that they strive to prevent or annihilate competition.

Not one of these discredited features transpires in railway pooling. Railway rate prices must be publicly announced. Not so the prices of trust products. Railway rates must be filed with and receive the preliminary approval of a governmental commission appointed by the president and confirmed by the Senate of the United States. Not so with trusts, which may legally avoid or evade such publicity and review. The Interstate Commission receives the detailed annual reports of the interstate carriers, and publishes them to the coun-

try. Not so with trusts. The railroad companies do not control their own rates, but fix, announce and change them publicly, with reference and concessions to great and ceaseless elements of competition, or because of leniency undeniable to weak or wavering railways. The trusts make their own prices and sale conditions, and may grant various terms and preferences. Railway prices must be public, just, fair and uniform and their reasonableness may be reviewed and established by the courts. Not so with any trust prices. Railroad rate prices are known to all competing railroads. Trust prices are withheld from their competitors, if practicable, and competition with them may be modified, merged or extinguished. Trusts may restrict trade. Railways seek in their own and the public interest to greatly enlarge it. There is no restriction or crushing out of railway competition, because all competing carriers are legalized and are ever living agencies of commerce and law. The more crushed and the poorer a rival railroad becomes, the more active, usually, is its competition. The very reverse is the fact as to trusts.

Further, no railway is required to join any pool legislatively sanctioned, and if three roads in five pool, the two which do not are as fully and publicly advised of the methods of the other three as if they were parties to the agreement. Not so with trusts.

As to voiding competition, the railways could contract to divide money or tonnage, or both, and to maintain rates, until 1887, yet none of the things now held up to public fear and execration as to pooling ever transpired. Why, with all their power and higher rates, did they not then stop parallel construction, then "establish monopolies," and then increase rates, or at least resist and stop the annual tendency of rates downward? The enormous increase of railway mileage of the United States, and the constant and voluntary rate reductions are among the incontrovertible answers. They did not attempt to do it, and could not. The unceasing forces of the great factors of true competition produced annual reductions in rates, and will keep them low permanently.

An additional strong reason, even more forceful to-day than then, is that railways sought to build up large local and through traffics at low rates rather than to carry less business at higher rates, a policy which developed local traffic as well as the national tonnage. By enlarging local freight traffic local travel increased, and belonged to the company which gave it growth. There was no water route from Pittsburg or local points to Baltimore, but those points were given the benefit of rates at least as low as the rail rates from Buffalo to New York, which were made against the canal rates. In other words, due competition and enlightened self-interest prevailed.

Pools did not even preserve former dividends on railway stocks. Every company in the Union which has increased its stock has reduced its average rates. If the New York Central Company should double its bonds and shares this year it could not, with all its own powers, plus those of its strong proprietors and allies, increase its average rate in the slightest degree, because the lines competing with it would not increase their capitalizations or rates, and the Erie Canal and the Hudson, St. Lawrence and Mississippi rivers, and the competition of Galveston, Baltimore, Montreal and London would continue to prevent it.

The analogy of the present telegraph charges to railway pooling is strong and convincing. Simultaneously with the earlier construction of railways, parallel telegraphs were built, the one to transport persons and property, the other information. The telegraphs entered into what was then, as now, falsely called "competition," in which they had rate contests, lost money, struggled for capital and became involved with legislatures. They increased their stocks and entangled interested railway companies. Finally the wires were substantially consolidated. The railways could only amalgamate connecting lines, but the telegraph companies combined parallel lines.

When Mr. Gould made his telegraphic combinations it was widely alleged by many who now deem railway pooling

equally monstrous, that he might use the information derived from inspected messages to create syndicates and fortunes which would threaten the republic. On the contrary, although its stock was increased, the Western Union Company proceeded through desirable economies to increase business, to reduce its rates, extend its lines, increase its facilities, achieve greater celerity in the transmission and delivery of messages, and made them so inviolate that it resisted even the Government's demands to produce them. Aside from special telegraphic charges to Government and the press, and for night messages, the charges made territorially are uniform, and the users of its facilities not only no longer complain of discriminations, but applaud its reduced, well-known and unrebated charges, because they are uniform. No man believes his rival pays less to that company than he does for a like service. Its business is practically postal without law. Substantially, railways seek corresponding rights to agree legally with parallel transporters, in order that they also may maintain those sound principles and charges, to be guarded, however, in the railway instance, by due national regulation. The telegraph results clearly represent better commercial and public conditions without law than the disturbing railway conditions under the Interstate Commerce and Anti-trust acts and decisions.

As these facts cannot be controverted, the railways desire those distinctive grants of authority for legal organization which will remove business and legal doubt, and which are as practicable, effective and necessary in railway administration as to organize and conduct chambers of commerce, stock, maritime or produce exchanges and boards of trade. The same principle requires the union and concert of counties in the State and of the States in Congress. The New York Clearing House, with annual clearances fifty times the gross yearly railway receipts, has proven a national bulwark of finance, and assists all right fiscal purposes and doers. That one or more of such bodies sometimes do wrong is an argument *for* them, because their principles and deeds show high averages of rectitude and public benefit and they correct those wrongs.

When, however, railways seek to adopt like sound business methods to enable them to practically and publicly exercise these beneficial public principles, law denounces, legislation condemns and decisions hamper them, and have done so for too many years.

It is time this was changed, and that more just consideration be now given to the great benefits they have wrought, and to the facts and experiences which have exploded many prejudices and theories of the past.

These benefits will be discussed next.

V—RAILWAY CLAIMS TO LEGISLATIVE RELIEF.

A generation ago orators applauded the opening of new railway lines because they would develop new and great arable areas at the rates then current. Reductions of such former rates were sometimes publicly opposed. A State convention at Syracuse in December, 1858, resolved:

“To recommend the passage of a law by the next Legislature which shall confine the railroads of this State to the business for which they were originally created.” (Local traffic.)

The average rate of the New York Central Company in that year was 3.18 cents per ton per mile, equal to 70 cents per 100 pounds of grain from Buffalo to New York. The rate now is not more than nine (9) cents per 100 pounds. In 1873 the all-rail grain rate from Chicago to New York was 55 cents per 100 pounds. It is now 20 cents on wheat and 15 cents on exported corn.

In 1873 the freight rates upon 70,268 miles of railway then built averaged 2.21 cents per ton per mile for 168,000,000 tons carried. In 1895 the rate averaged .839 of one cent for 763,800,000 tons carried upon 179,162 miles of railway, producing gross freight revenues of \$743,784,451, the rate for 1873 being over 263 per cent. of the rate in 1895. At the average rate charged in 1873, the freight earnings in 1895 only would have been \$1,215,344,000 more than they were, over eighty millions more than the entire indebtedness of the States and Territories in 1890.

Hon. Edward Atkinson says that in 1895 ten and three-fourths tons of food, fuel, fibers and fabrics were moved 126 miles by railway for each of 71,000,000 inhabitants for \$10.47 per capita, and that

"A generation since a charge of treble that sum was deemed a great achievement," which ". . . would have been \$31.41 per head."

Railway owners have not correspondingly benefited. In 1872, 57,533 miles of railway paid stock dividends of \$64,418,157, or \$1,120 per mile. In 1895, 179,162 miles operated paid \$81,375,774 in dividends, or but \$454 per mile, being but 40 per cent. of the dividends per mile paid in 1872. The mileage increased 310 per cent., the dividends 26 per cent.

Of American railway earnings in 1895, 68 per cent. was derived from freights, 24 per cent. from passengers, and 8 per cent. from miscellaneous sources. The gross earning upon each ton of freight moved in that year was 97 cents and 48 cents upon each passenger carried. The addition of but one cent per ton on each ton carried in 1895 would have been \$7,638,000, and one cent on each passenger carried would have been \$5,439,742, or over \$13,000,000, calling one ton of freight and one passenger equal revenue producers.

Apportioning the amount paid as dividends upon stock in 1895 in the above proportion, the freight traffic would be chargeable with \$55,335,526 and the passengers with \$19,530,187, equal to but 7.2 cents per ton and 3.6 cents per passenger carried.

Poor's Manual reports for 1895, \$5,182,122,000 of railway stock capital outstanding. The dividends on stock in that year being \$81,375,774, the average rate of dividends was 1.57 per cent. The Government reports say that nothing was paid in that year on \$3,475,640,253 of this stock, being 68 per cent. of the whole amount outstanding.

Even had the average charge for transporting one ton one mile, which obtained in 1888—the first full year of the Interstate Act—been charged in 1895, the freight revenues of the latter year would have been \$122,223,523 more than they

were, yet railway taxation increased in the same period from \$25,435,229 to \$39,250,000, or 54 per cent. These facts seem to prove a sufficient evaporation of the "water" in stocks to satisfy the most optimistic hydraulicon.

The number of railway investors is also too often ignored. The eastern trunk lines report that their shareholders number 99,826. To this add the share and bondholders on the same and all other American railroads. One eastern line reports that 50 per cent., and the Pennsylvania Railroad Company that 40 per cent. of its shareholders, are women.

At the same ratio of shareholders to mileage, the total number of stockholders in the railways of the Union would be over 950,000, not including bondholders. Calling the total 1,250,000 of bond and shareholders at home and abroad, they, with 785,000 employes, make over 2,000,000 persons dependent upon or interested in our railways. Assuming each reported adult to represent five persons, the total number affected by railway results is ten millions of persons, exclusive also of those interested in the manufacture or production of locomotives, cars, rails, other iron products, wheels, lumber, cross-ties, stone, paints, plushes, oils, paper, etc., used by the railways and now in stagnant states of production, largely because the railways lack even ordinary prosperity.

The total number of employes of the United States Government June 30, 1896, was 220,594, excluding judicial and legislative appointees, but including the army and navy and marine corps. The number of railway employes in 1895 was 785,034, being 88,568, or 11 per cent. less than 1893, although the railway mileage had increased 4,380 miles. The number of persons employed per mile operated in 1893 was 5.04 and but 4.38 in 1895, a reduction of over 13 per cent.

A comparison of the rates charged on American and foreign railways for 1892 produced the following results:

	For passenger, mile.	For freight, per ton per mile.
United States	2.14	0.97
Prussia	2.99	1.32

	For passenger, mile.	For freight, per ton per mile.
Austria	3.05	1.56
France	3.36	1.59
Belgium	2.25	1.39

English railway accounts are not stated per ton mile and their rates usually also include cartage. A comparison is therefore difficult, but a treatise by Edward Bates Dorsey upon "American and British Railways Compared," which was awarded the Norman medal of the American Society of Civil Engineers, said of the freight rates in 1886:

"The rate as given from Liverpool to Birmingham, ninety-seven miles, on grain and flour, is \$3.01 per gross ton and the rate as given from Chicago to New York, 1,000 miles, is \$5.60 per gross ton." (It is now \$4.48.)

J. S. Jeans on "Railroad Problems" (London, 1886), said:

"English railways practically work on the same tariffs to-day they did in the infancy of the system," and, "It is probable that the average ton mile rate on English railways will not be much, if any, under 1½d. (three cents), which is just three times the amount charged on the principal American lines."

Our best late information is that our rates have been reduced since then more per mile than have theirs.

The average receipts of all European railways in 1890 were \$9,800 per mile; ours \$5,700, or but 59 per cent. as much.

If these annual reductions in American railway rates continue they will stop investments of capital for construction and betterment, will impair the physical conditions of the railways most affected, will induce inferior service with increased risks to persons and property, and cause yet greater depletions of the values of railway securities. This will be mainly caused by so-called "competition," brought about or encouraged by adverse legislation, by withholding proper legislation, by erroneous legal judgments, or from some combination of those hurts.

We have 26.5 miles of railway for every 10,000 inhabitants, while Great Britain and Ireland, Germany, France and Austria-Hungary average but 5.4 miles.

Contrasting the wages of American and foreign railway labor, the following statement will suffice, as the same ratio extended substantially through other branches of railway service:

	Per Day.		Per Month,
	Engineers.	Firemen.	Conductors.
United States.....	\$3.65	\$2.05	\$82.40
England.....	1.25 to \$1.87	.75 to \$1.12	30.40
France.....	1.00 to 1.16	.75 to .83	.....
Germany.....	.81 to 1.25	.62 to .81	28.30
Belgium.....	.81 to .89	.50 to .60	.....
Holland.....	.83 to 1.04	.54 to .72	.....
Hungary.....	.....	.....	32.40

This comparison is yet more favorable to American railway labor when the longer hours and more onerous conditions which constitute a day's work abroad are considered.

There *must* be points below which reductions of railway rates should not in equity be borne entirely by railway owners. No reason can be fairly alleged that the farm labor of Kansas should be reduced while the railway labor of New York is maintained without reduction. When not only rates are greatly lower, but wages and taxation are higher, American labor must ultimately share the losses if the public good is in question and the incessant tendency of legislatures and courts to reduce rates and fares continues.

The Board of Trade and Transportation of New York well said in February, 1896:

"Rates may be too low as well as too high for the public interest."

Most railways were first constructed to connect important objective points between which there was substantially no local traffic until, in conjunction with immigration, opening mines, etc., which the railways most stimulated, the intermediate traffic was developed. Whatever bonds or stocks were issued to construct such lines, their holders were compelled to await returns thereon until the sparse territories built through them, furnished adequate business. Before such better results were reached, many of the railroad companies defaulted upon their interest, were sold out and reorganized, and much, if not all,

of the so-called water was thus pressed out of them then. However much the railways lost, the country traversed invariably benefited greatly.

After this earlier period of much loss and long waiting for railway returns there was a short intermediate period of comparative peace, but more recently reasonable revenues are again jeopardized or reduced by law, by unregulated strife, by stringent interpretations, general legislation, the failure to sanction reasonable rate agreements and by drastic legal definitions. The railway history of the United States does not therefore prove that even average fair returns have come to the railway capital actually invested, that it has received the average profits yielded by other investments, or that the nation appreciates the value of the carriers to its highest development and power.

More legislative, legal and commercial consideration for railway interests seems, for all these strong reasons, a long deferred justice, especially as the form in which it is urged will also conserve the public weal. One alternative is more railway consolidations and the survival of the strongest corporations, when the desired uniformity of rates will more fully ensue.

LEGISLATION MORE RESTRICTIVE.

These facts, arguments and conclusions remain uncontroverted, yet national and State legislation grows more hostile and legal decisions more stringent. Not only has there been no congressional recognition of interstate railway benefits, but consideration therefor has decreased as those benefits have become more apparent. National and State legislatures constantly consider, or enact, additional restrictions upon the railways, and courts inherit and proclaim this tendency. Within five years, numberless National, State and municipal measures have been enacted or entertained or are now pending, to reduce rates and fares, for pro rata rates, amended bills of lading, car couplers, automatic brakes and safety appliances, more protection for labor, grade crossings, speed of trains, elevated tracks in cities, reduced working hours, legislation as

to strikes, more taxation, etc., all intending to, or producing, decreased net railway revenues.

There were, for example, over thirty measures pending in the Fifty-third Congress affecting railways, but one—the pooling amendment—being for their relief, and it was unhappily defeated. If the public good requires additional import measures to protect tin makers, farmers, lumbermen, importers of silk, etc., and national finances, should not railway owners and employes be also now reasonably protected in some due and well regulated manner, since they most make effective the cheap and quick distributions of American products throughout the nation and world?

To this mutual end two views are to be reconciled: One, the fear that if pools are authorized rates will be advanced, the other, the conviction of the railways that, without pooling, competitive rates will become yet more unprofitable and disastrous.

The railways propose to protect the public in the first instance by submitting their rates to the preliminary review of the Interstate Commerce Commission. They propose, on the other hand, that the carriers be empowered to stop undue depletions of those rates by enforceable agreements and that they be legally enabled to collect and enjoy their reasonable published charges through the agency of pooling, which shall also be open to governmental approval and current inspections and reports. If fairness and intelligence and the precedents of all experience are to be regarded, as in all other leading acts of government, law and justice, no valid objections lie against these proven mutual benefits and all interests should be able to agree upon the needed consummation.

In a word, we claim small relief for great benefits conferred.

We will show next how pooling has been recognized and indorsed.

VI—INDORSEMENTS OF POOLING.

The extent to which pooling has been considered by leg-

islatures, trade bodies, State railway commissions and individuals, and the changes in the opinions of important persons and commercial associations, constitute important testimony in the railway behalf.

The Cullom committee of 1886 especially considered pooling, and of 149 persons whom it questioned, forty-two favored pooling generally, twenty-six favored legalized pools, forty-one pools with legal and other restrictions, *and no witness offered any acceptable substitute for pooling.*

For these reasons that committee reported in 1886:

"It would seem wiser to permit such agreements rather than by prohibiting them to render the enforcement and maintenance of agreed rates impracticable."

Further:

"The committee does not deem it prudent to recommend the prohibition of pooling." And "The ostensible object of pooling is in harmony with the spirit of regulative legislation."

Still further:

"The majority of the committee are not disposed to endanger the success of the methods of regulation proposed for the prevention of unjust discriminations, by recommending the prohibition of pooling."

The law that committee first submitted therefore provided:

"Said Interstate Commission shall especially inquire into that method of railway management or combination known as pooling and report to Congress what, if any, legislation is advisable and expedient upon the subject."

Senator Cullom says that Judge Reagan of Texas, then chairman of the House Committee on Commerce, mainly defeated this majority of witnesses, and the conclusions of his committee to legalize pooling as proposed in the act reported.

Judge Reagan went thence to the United States Senate, and having thereafter become a railway commissioner of Texas, he frankly said:

"Farther study has caused me to believe that the (5th)

section may be amended so as to benefit both the railroads and the people by allowing the railroads to enter into traffic arrangements with one another."

Among other prominent men who have as frankly changed their views are Hon. Charles S. Smith, late president of the New York Chamber of Commerce; Hon. Simon Sterne, the counsel for the New York Board of Transportation against the railways of New York, and others.

Mr. Smith said:

"Pooling certainly has some good points for shareholders and the public; it does prevent, to some extent, unjust discriminations; it aims to treat all alike."

Mr. Sterne said of pools:

"They have brought about a change for the better from that which prevailed before the pooling arrangements were made."

Prof. Atwater of Princeton described pools as agreements among railways:

"For each to accept as its share of the competitive business at a moderately remunerative rate common to all what shall be judged to be its just proportion by an umpire or board selected by them to make the apportionment."

The attention of the first Interstate Commerce Commission was promptly directed to this subject, and their first annual report said:

"The scheme of pooling rates, or the earnings from traffic, was devised and put in force . . . as a means whereby steadiness in rates might be maintained."

The same report further said:

"The scheme was one which was made use of in other countries, and had been found of service to the roads." And: ". . . The absolute sum of the money charges exacted for transportation, if not clearly beyond the bounds of reason, was of inferior importance in comparison with the obtaining of rates that should be open, equal, relatively just, as between places and as steady as in the nature of things was practicable."

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The Railway Commissioners of Kansas said in 1885:

"Since the violent confliotions of rates consequent on rate wars between rival lines result usually in discriminative benefits to a few at the ultimate expense of the public, means should be taken to at least moderate this disturbing element to the business interests of the country. As a means to this end, we venture to suggest that contracts or agreements between rival companies to carry on interstate traffic upon common rates, providing those rates are reasonable and just, should be invested with a legal status and be enforceable with appropriate sanctions."

The average rate for freight in that year was 1.036 cent per ton per mile. It was .839 of one cent in 1895, or but 80 per cent. as much.

Judge Cooley said:

"The avowed purpose in pooling is to avoid ruinous competition between the several roads represented and the unjust discrimination between shippers which is found invariably to attend such competition. . . . It may therefore be taken as agreed that, so far as pooling arrangements have the correction of this subject in view, the purpose is commendable."

He said further:

"Without the aid of the law to enforce pooling arrangements it is not yet apparent that any scheme can be devised whereby the cutting of rates can be effectually prevented."

He said in an address delivered to the Boston Merchants' Association, January 8, 1889:

"The old pooling was never so harmful as some persons supposed, and was probably condemned by law more because of what it was feared it would become, or might become, than because of what it was."

He also said to a convention of State Railway Commissioners in Washington, May 20, 1890:

"It may seem altogether proper that the Government should make, or permit to be made, some provisions whereby the comparatively feeble road may be supported, not entirely by the resources of the district which it serves, but to some ex-

tent also by a tax upon the business or resources of other roads. A provision to this end is not uncommon."

Charles Francis Adams said:

"The practice known as pooling, which the Interstate Commerce Act inhibits, was merely a method through which the weaker railroad corporations were kept alive. To prevent excessive and unequal competition business was so divided that the less favored corporation had some share of traffic assigned it."

Ex-Commissioner Walker said, June, 1893:

"The pooling of freights or of earnings is the only practice ever known in the history of the world, short of common ownership, by which such a resolute maintenance of rates as is justly required by law for the prevention of unjust discrimination can be secured. In other words, it is seen at last that a fair division of competitive traffic would be an aid and support to the regulative statute."

The Minneapolis Board of Trade, in its appeal to Congress in 1892, said:

"The railroad pool honestly administered is the natural balance wheel of interstate commerce."

Prof. Hadley said to the Commercial Club of Chicago in April, 1894:

"Pools were better administered in 1880 than in 1877, and better in 1886 than in 1880."

In 1893 the United States Senate referred the subject to the Interstate Commerce Commission for reconsideration, whereupon the latter asked commercial bodies and others as to the advisability of amending the Interstate Act so as to legalize "pooling contracts which would tend to diminish unlawful discriminations."

Eighty-nine (89) answers favored that proposition, or the entire repeal of the Interstate Act.

In June, 1894, a conference of commercial interests in Washington, representing twenty-three States and eighty-seven trade bodies, unanimously recommended the passage of the Patterson bill, which has now been modified to more favor the public in the Foraker bill.

After seven years of experience under the Interstate Act pooling was also indorsed—in Washington, December, 1894—by all the State railway commissions, except Minnesota, at which time it was resolved:

“That competing carriers may safely be permitted to make lawful contracts with each other for the apportionment of their traffic or the earnings therefrom, provided conditions and restrictions are imposed which protect the public from excessive and unreasonable charges.”

The most recent authoritative expression upon this subject was that of the National Convention of Railroad Commissioners held in Washington in May, 1896, when Hon. J. H. Reagan of Texas, chairman, who had once so strongly opposed pooling, reported as follows, after suggesting that “the Interstate Commerce Commission” be empowered “to make, regulate and maintain rates on interstate shipments of freight.”

“I have believed, and do believe, that the pooling of freights and division of earnings could be authorized by law and so regulated as to prevent, to a large extent, if not entirely, railroad wars and unjust discriminations in freight rates, with advantage both to the railroads and to shippers.”

A separate report by Mr. Lape, of the Illinois Railway Commission, said of pooling:

“ . . . It would be a great benefit to the entire public, as well as the railroads.”

In the same report he said further:

“I therefore give it as my opinion that a law should be passed legalizing the pooling of freight earnings by railroad companies, under the inspection and approval of the Interstate Commerce Commission. Because it would protect the weaker lines; protect railroad property as a whole; protect the smaller shipper as against unfair advantages possessed by the larger shipper, and would secure first-class railroads and railroad service for both freight and passengers, and in addition to all these advantages the working classes would unquestionably be benefited to a great extent.”

No objection was offered to either of these reports.

The Committee on Government Ownership, Control and Regulation of Railways reported to the same convention without dissent:

"Congress must legalize pooling in order to make it an effectual remedy for rate wars."

The National Board of Trade has twice recommended such legislation. All these judgments received the approval of the House of Representatives in the Fifty-third Congress by a majority of fifty-six, and the Senate Committee on Commerce reported the bill favorably at the same session.

As to experiences abroad, Mr. Acworth of London, said in the *New York Independent* (October, 1892):

"Certain it is that rate-cutting has been practically put to an end by an understanding between the companies which, like international law, has no sanction behind it except the agreement of the high contracting parties. . . . Over a considerable part of England the traffic is pooled. . . .

"Some of these pools are subject to revision every ten years, others I believe to be agreements in perpetuity, but in this latter case they are, perhaps, more of the nature of partitions of territory than traffic pools."

He also said in the same article:

"To pools properly so-called there does not seem to be any popular objection. Indeed, within the last year the two great Scotch companies, the North British and the Caledonian, have agreed to a twenty-five years' pool of their traffic, and though there was a good deal of opposition in Glasgow when it was first announced, within the last few weeks the Glasgow traders have confessed that they were mistaken and that none of the ills which they anticipated have arisen. . . . But the fact is the public see what looks like competition going on all around them. As traders they see the canvassers of the different companies coming to them, hat in hand, and begging for traffic, promising a later departure, more careful handling and more prompt delivery, it may be more generous settlement of claims. As passengers they see the companies vieing with one another in improvements, in accommodations, in frequency

of service or increased speed, as well as in a score of details which make up the comforts of passenger travel. Accordingly, when the theorist comes along with his assurance that competition is extinct and that pools have done the mischief, they are apt to shrug their shoulders and take not much notice."

One feature of American railway rates is too often forgotten. It is alleged that they are usually made arbitrarily, and are excessive, whereas it is believed that, aside from the reduced tariffs due to natural competitive forces, and the changes wrought in local rates by the long and short haul clause of the Interstate Act, 95 per cent. of all other rates have been reduced to their present low bases by conference, discussion, trial, change and ultimate agreement between the large producing and consuming interests of the country and the railways, so that the interstate rates now published and filed substantially meet all the requirements of powerful competition and of the law, and have the public approval. At all events, no appreciable percentage of the rates is complained of on that score. Secret and preferential reductions from such rates should, therefore, the more promptly cease; yet while asking means to that end from the national legislature there should also be a closer supervision of railway management by railway financiers, owners and officers.

While many of the difficulties which embarrass the railways could be corrected by the sterling good faith which characterizes the management of English railways, the equality of their lines in distance and facilities, their short distances and dense traffic, all make it easier to maintain their rates on faith, yet they have had their periods of distrust and wrong. The dissimilarities in our conditions, the vast extent of our country, our long railway distances and extended systems, the greater differences in the facilities and strength of American railways and the strong rivalries of interior and exterior water carriers, etc., require that good faith be supplemented here by legislative sanction and safeguards.

In the case of the Omaha Board of Trade against various railways, Judge Cooley said:

"If a rate when made by one company as a single rate would in law be unobjectionable, it would be equally so when made by several as a joint rate. The policy of the law and the convenience of business favor the making of joint rates, and the more completely the whole railroad system of the country can be treated as a unit, as if it were all under one management, the greater will be the benefit of its service to the public and the less the liability to unfair exactions."

This is all the most perfect pool could do. The foreign railway rate and pool policy accords with his wise utterance, and these articles will conclude with that review.

VII—FOREIGN RAILWAY RATES AND POOLING.

English public railway policy was best stated by the Royal Commission of 1867, which inquired into the charges, rates and tolls of British railways:

"We are of the opinion that a sound principle to act on, in the matter of working and traffic agreements between railway companies, is to allow any companies to enter into them without reference to any tribunal, upon the sole condition that the particulars should be made public in the locality and that they should be terminable by either party at the expiration of limited periods. If any such agreement contained anything contrary to the rights of the public, the Court of Common Pleas should have a power of setting it aside at the instance of the Board of Trade."

"Railway Rates, English and Foreign," by J. Grierson, manager of the Great Western Railway (London, 1886), said:

"Agreements for the division of traffic, or for 'pooling,' as they are termed in the United States and Canada, are not unknown in this country. Some have been sanctioned by Parliament, others have been made between the companies without any express Parliamentary authority, and have been carried out. Mr. Gladstone made in 1851 an award apportioning, for five years, the receipts for traffic carried between London, York, Leeds, Sheffield, etc., between the Great Northern and London & Northwestern and Midland railways. In 1857 he made a

further award determining, for fourteen years, the proportions in which the proceeds from passenger and goods traffic between the same and other places were to be divided between those companies and the Manchester company."

"The Working and Management of an English Railway" (1891), by George Findlay, manager of the London & North-western Company, said:

"There is another plan which railways sometimes adopt which is known as 'Percentage Division of Traffic,' and which is carried out in the following manner:

"Supposing that there is a certain traffic to be conveyed between two towns or districts, and that there are two or more railway companies, each having a route of its own by which it is enabled to compete for the traffic. An agreement is come to and the receipts derived from the whole of the traffic carried by all routes shall be thrown into a common fund, and that each company shall be entitled to a certain percentage of the whole.

"The percentages are usually adjusted on the basis of past actual carryings."

"The Railways and Traders," by W. M. Acworth (London, 1891), said:

"Companies have combined and do combine every day, but for all that they have competed, do compete, and, as far as we can see at present, are likely to continue to compete to the end of the chapter. Will any Lancashire trader go into the witness-box and declare that the Lancashire & Yorkshire and the Northwestern never make any attempt to get hold of each other's traffic? And yet all the world knows that, from a time whereof the memory of man runneth not to the contrary, these two companies have agreed to divide the traffic at competitive points."

He further said:

"The much discussed Continental Agreement between the Southeastern and the Chatham & Dover, which settles the proportions in which the two companies are to share the receipts for all traffic to the Continent passing over their lines is

solemnly scheduled to an act of Parliament and has been judicially considered by every court in the country up to and including the House of Lords. Yet is it not matter of common knowledge that the Southeastern and the Chatham each fight their hardest to divert the stream of traffic from the rival line?"

A prominent case of *Hare v. L. & N. W. Ry. Co.* grew out of the fact that:

"Independent conterminous routes agreed to divide the profits of the whole traffic in certain fixed proportions calculated on the experience of past course of traffic. It was held that such an agreement, being bona fide, was not ultra vires."

Wood, on Railroads (London, 1894), said of this case:

"A shareholder applied, though after several years of acquiescence, for an injunction to restrain the companies from carrying out the agreement. The application was refused. The vice-chancellor considered not only that on principle such an arrangement was legal, there being nothing prejudicial to either the shareholders or the public, but also that he was concluded by the judgment of Lord Cottenham of the Court of the Queen's Bench in the *Shrewsbury* case."

The same authority said generally:

"In England it is held that 'pooling' contracts or arrangements between competing roads, by which they agree to divide their joint earnings upon certain classes of business, or even their entire earnings, are legal and valid, where it does not appear that the interests of the shareholders or the public are prejudiced thereby."

The "*Mogul Steamship Company, Lim., v. McGregor, Gow & Co. et al.*," grew out of a contract limiting the number of ships to be run in a certain service. Lord Bramwell said of this, in 1892:

"It does seem strange that to enforce freedom of trade, of action, the law should punish those who make a perfectly honest agreement with a belief that it is fairly required for their protection."

Hon. Thomas M. Cooley, the first chairman of the Interstate Commission, said January 8, 1887:

"Pooling arrangements have been sustained in Great Britain. One of the cases passed upon was a pooling arrangement between stevedores; another was between competing railroads. Vice-Chancellor W. Page Wood said, among other things: 'It is a mistaken notion that the public is benefited by pitting two railroad companies against each other until one is ruined.'"

Prof. Hadley, of Yale College, testified in 1885 before the Senate Select Committee on Interstate Commerce, as follows:

"It is a noticeable fact that at the time when the first series of attempts was made to check discrimination in England the first pools were arranged."

He more comprehensively testified:

"It may be stated as a fact of history that no nation has succeeded in prohibiting discrimination and pooling at the same time. I should be willing to go further, and say that, as far as I know, no law has been permanently effective in prohibiting or discouraging either discrimination or pooling, except in so far as it at the same time indirectly or directly encouraged the other. On the Continent of Europe the worst forms of discrimination, the worst abuses from which we suffer, are, in general, efficiently prohibited, but it is generally by an organized system of pools of whose completeness we have no conception in this country, pools that are not merely recognized by law, but enforced by law. The State itself enters into such pooling contracts on account of its own lines with private lines."

Senator Platt, of Connecticut—"To what countries do your remarks apply?"

Mr. Hadley—"Chiefly to France, Belgium and Austria, also to a less extent to Switzerland and Italy. In France they have never recognized railroad competition as a principle, and scarcely have had it in practice at any time; but in Belgium and Germany they have tried railroad competition, and what is all the more striking, have given it up as producing discriminations only to be avoided by pools. About the year 1860 the

railroad system of Belgium was partly in government hands and partly in the hands of special private companies. The private companies had longer lines, but the government had unity of management and had had the chance of first laying out its railroads and choosing the best routes. The result was an extremely even system of competition. Competition produced the same effects it has produced in America—good and bad. It tended to the rapid development of the country. It caused railroad rates to become lower in Belgium than they were or had been in any other part of Europe, or any other country except the United States. On the other hand, it caused all sorts of oppressive preferences, special rates, special contracts with private individuals; the government itself, in spite of all the central authority could do, being a worse sinner than any of the private lines in the matter of giving special rates to individuals. The people would not stand that the government road should not make money, while a private road, apparently not quite so well situated, should make money. They tried to prohibit the competition of private lines by law. It was partly ended by the absorption of the competing lines and partly by pooling arrangements.

“There is one large private company, the Belgian Grand Central, that has a most inflexible pooling contract with the Government.

“In Germany, also about the year 1870, there was a tolerable equality, in Prussia particularly, between the State railroads and the competing private lines, and there was also a system of discriminations. Just in so far as the State either consolidated with private railroads or entered into pooling contracts with them the discriminations were abolished, but not until then. They never had discrimination so badly in Germany as we have in America, or as badly as they had in Belgium even, but they had some, and it was only abolished by consolidation and pooling.

“At present the Prussian Government owns practically all its railroads, but there was a time when it had large pooling arrangements with private lines.

"The Austrian Government and the private railroad men have come to the conclusion that the only way they can possibly abolish discrimination is by systems of pooling. The two main cities, Vienna and Budapest, the capitals of Austria and Hungary, are connected by two railroads and the river Danube, one of these railroads having been built by the State. As soon as the second railroad was made there was this division made, which included the State road and second road and the water route, each carrying its percentage, although the water route was a natural water course, . . . and so anybody who said he would not go into a pool would be considered to be a very strange man, and a man who was making trouble.

"A still stronger instance, perhaps, is the Arlberg Tunnel. Before they had opened that road they made a percentage division between that and the existing roads by dividing the traffic at each end of the tunnel. The parties to this division were the Austrian State railroads, Austrian private railroads, Bavarian railroads, two or three Swiss private companies, railroads in other South German States and several French companies that formed remote connections. They state themselves in all that is written on the subject, that the only way of avoiding discrimination between competing points is by such percentage divisions, with the authority of the Government."

Prof. Hadley said later in his work on "Railroad Transportation" (1886):

"With all the police power which the German Government controls, a power a hundredfold greater than anything we have in this country, and with all its dread of irresponsible combinations, it seems that pools are not a thing which can be prevented, and that the only way to control them is to recognize them as legal and then hold them responsible for any evils which may arise under their management."

Speaking of the governments of central Europe, he said:

"To secure obedience to this (prohibitory) system they must take away the temptation to violate it. This can only be done by a system of pooling contracts. These are accord-

ingly legalized and enforced. They are carried on to an extent undreamed of in America. They have both traffic pools and money pools. There are pools between State roads and private roads, between railroads and water routes."

The committee of the German Empire reported, prior to to its purchases of its main railway lines:

"The uniting of the property, of the traffic and of the management of the inland main lines under the strong arm of the State, are the only efficient and proper means to solve the task."

This clearly is a governmental "pool."

This long study, these concurrent conclusions and the clearly just and beneficial mercantile as well as railway results, which followed these policies in those great countries, cannot be ignored by denunciations and arbitrary declarations of our dissimilar conditions, which really differ only because they are more complicated, because our rates average not more than two-thirds those which prevail in those nations under their enforceable contracts, and because instead of jealous nations which there assisted the solution, we presumably have harmonious States which should aid us.

Any act or amendments which substitute theories for these actual carrying and commercial experiences throughout the world, and paradoxes for principles, will continue impracticable, ineffectual and hurtful to consistent carriers and patrons.

Senator Cullom said in the *Independent*, in October, 1892:

"The stockholder in a railroad corporation owns his stock as fully and is entitled to as much consideration in respect to his rights as if he were a stockholder in any other enterprise, and the State is bound to respect those rights."

Addressing a committee of Parliament in 1872 on behalf of railway interests, the younger Stephenson said:

"What we want is a tribunal competent to judge and willing to devote its attention to railway subjects only. We do not impute to Parliament that it is dishonest, but we im-

pute that it is incompetent. Neither its practical experience, nor its time, nor its system of procedure, is adapted for railway legislation. . . . What we ask is knowledge. Give us, we say, a tribunal competent to form a sound opinion. Commit to that tribunal, with any restrictions you think necessary, the whole of the great questions appertaining to our system. Let it protect private interests apart from railways; delegate to it the power of enforcing such regulations and restrictions as may be thought needful to secure the rights of private persons or of the public; devolve on it the duty of consolidating, if possible, the railway laws and of making such amendments therein as the public interests and the property now depending on the system may require; give it full delegated power over us in any way you please; all we ask is, that it shall be a tribunal that is impartial, and that is thoroughly informed; and if impartiality and intelligence are secured, we do not fear the result."

This is as applicable to-day and to us as it was then to England.

May we not, therefore, soon say with Von Humboldt, that the:

"Chasms which divide facts from each other are rapidly filling up?"

The Trans-Missouri Decision.

BY GEORGE R. BLANCHARD.

" . . . The more things improve, the louder become the exclamations about their badness . . . In proportion as the evil decreases, the denunciation of it increases; and as fast as natural causes are shown to be powerful there grows up the belief that they are powerless."—*Herbert Spencer in "A Plea for Liberty."*

"Let the country make the railroads and the railroads will make the country."—*George Stephenson.*

"All we ask is that it shall be a tribunal which is impartial and that is thoroughly informed."—*Robert Stephenson.*

"I still cling to the simple faith that even in legislation it's a good thing, before making laws, to know what you are making laws about."—*Charles Francis Adams.*

The recent Trans-Missouri decision of the Supreme Court, by a majority of one, held that the Anti-Trust Act of 1890, which declared illegal "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, etc.," applied to a railway association contract; the language of the opinion being that

" . . . without proof of the allegation that the agreement was entered into for the purpose of restraining trade or commerce or for maintaining rates above what was reasonable . . ."

"The necessary effect of the agreement is to restrain trade or commerce, no matter what the intent was on the part of those who signed it."

Of sixteen judges who passed upon some phases of this general issue, ten substantially sustained the railway's contention. That five of those sixteen were upon the Supreme Bench of course gave effect to its major opinion; but the narrow majority of that court and the large adverse number

in the lower courts have justified the strong public interest and comment with which the decision has been received.

Aside from that view, the more than usually important legal questions involved in this judgment affect great issues and policies; and, so far as the railways are concerned, it will continue to be strongly questioned: (a) Is the Anti-Trust Law constitutional? (b) Did Congress intend it to apply to railways and does it so apply? (c) If it does embrace them, did the court differentiate justly between reasonable and unreasonable restraints of trade? (d) Do railway agreements having similar purposes unreasonably restrain commerce? (e) If so, are not the things declared by the Anti-Trust Law as misdemeanors, crimes which constitutionally entitle those accused to trial by jury?

However these contentions may be ultimately decided by the courts, legislative relief should and will be earnestly sought.

Section 5 of the Interstate Commerce Act of 1887 forbade the pooling of freights; and the pending judgment of the Supreme Court may forbid any other rate agreements. This will leave no recourse but individual railway action, which is always diverse and antagonistic. It is not the purpose to discuss now this estoppel of freedom of reasonable contract in a nation dedicated to liberty, nor the striking contrasts between the protection of reasonable railway rights in Europe and the lack of due legislative protection in America; but the comparison is naturally attracting American capital and that of other nations to the greater security which other and wiser countries offer. Nor is it my present intention to argue that our railways are entitled to greater protection than they have received because they represent the nation's greatest material, fiscal and employing interests, charge the lowest rates, pay the highest wages, and receive smaller dividends than any other railways in the world, while receiving the least legislative consideration.

From the Granger cases of twenty or more years ago until now, various popular phrases have much influenced the

public mind, such as: "Oppression and monopoly," "Clothed with a public interest," "Public policy," "To destroy competition," "Combinations of capital," "The rights of shippers;" and now the shibboleth is, "In restraint of trade."

When the railways have pleaded that these maxims convey mutual meanings and rights, and that transportation competition differs from mercantile rivalry, they have been confronted with definitions by legislatures and courts interpreting those watchwords to mean that the rights of the public to manage railway property should be enlarged while those of its owners should be lessened, until now, regardless of all former guises, the armies of socialism, reinforced by the pending decision, are advancing these old banners toward dangerous business policies against which no changes of import tariffs or policy of finance can restore commercial confidence. Unrest, consequently, walks everywhere.

I therefore argue the public necessity and equity for legalized railway compacts; that they do not and will not unreasonably restrain trade or commerce; and that their intent is an important feature of their creation, in practice if not in law. The necessity for such associated railway action has been repeatedly indorsed by governmental witnesses.

The Cullom report of 1886 said:

"A basis of fixed rates would seem to depend upon a general predetermination of the rates to be established by the carriers interested. It seems necessary, therefore, to leave a way open by which such agreements can be made, in order to avoid the constant friction that would otherwise be occasioned."

Pursuant thereto, the Interstate Act, at the date of the Supreme Court decision, forbade the pooling of freights, but in Section 6 required,

"that every common carrier subject to the provisions of this act, shall print and keep open to public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established," and that "no advance shall be made in the rates, fares and charges which have been established and published as aforesaid . . . except after ten days' public notice." Also

that "... reductions in such published rates, fares or charges shall only be made after three (3) days' public notice."

And penalties were provided for neglect or refusal to so publish rates, fares and charges.

The same section further said:

"It shall be unlawful to charge, demand, collect or receive from any person or persons *a greater or less* compensation . . . than is specified in such published schedule of rates, fares and charges."

These provisions of law stood as governmental instructions, directing the manner in which the railways should individually prepare, issue and proclaim their freight and passenger charges. That they all published like rates was a further public advantage.

The first Interstate Commerce Commission especially considered the relation of railway associations to itself; and, with the eminent constitutional lawyer, Hon. T. M. Cooley, at its head, that body said in its first annual report:

"To make railroads of the greatest possible service to the country, *contract* relations will be essential, because there would need to be joint tariffs, joint running arrangements and interchange of cars, . . . some of which were obviously beyond the reach of compulsory legislation."

The same report said that: "Some regulations, in addition to those made by the law, are almost, if not altogether, indispensable. . . . An association of officers or agents is made the means of bringing about the desired unity of action."

These conclusions were based upon the proposition, apparent at the outset, that all traffic, whether large or small, passing between competitive points, must be shared by two or more traders and by two or more carriers between such points.

Harmony in determining their transportation rates and relations is clearly preferable to strife; for, in whatever view considered, competition is made honorable; and the parity of rates required by the common law, by the statutory law, and by the interests of the public, can be accomplished only

by discussion, concession and agreement between them. The law alone cannot achieve this result or defeat it; and the co-operation of the railways, after conferences with forwarders, has been found the only means by which this trade and transportation equality can be secured.

The practical application of the law and this status should be made clear. There are ten railway routes from Chicago to New York which may hold different views as to proper rates and classifications between these traffic centers. Before they can announce and publish equal rates they must harmonize those differences; otherwise, their charges would be different, discriminating and chaotic, and would disturb trade as much as if the same differences existed on one route. The latter being forbidden by law, the former is at least commercially undesirable, even if legal. The same Chicago lines may also differ as to the rate relations of Chicago to Milwaukee, etc., on the north, and as to Peoria and St. Louis, on the south; and similarly those cities may differ with Chicago.

Unless, therefore, agreements are arrived at as to the proper rates at each point and the relative rates to and from adjacent cities, additional disasters to trade may, and restraint of trade will, result from such geographical dissensions, rates may become irregular and unprofitable, and some shippers and points will be preferred, to the detriment of others.

Merchants must also have foreknowledge upon which to base their trade calculations; otherwise, sales of grain, merchandise, etc., and the relations of the carrying rates to such transactions would be purely conjectural. Rates so individually made would surely prove discriminating; and petitions would promptly go to Congress to save trade from such disastrous favoritism. The railways must also predetermine what charges they will require forwarders and travelers to pay for transportation services; otherwise, not only will some shippers from the same points be put at a disadvantage with others, but the merchants of Chicago, for example, might be discriminated against by lower rates from

St. Louis, which would control the eastward business of cities farther west.

Further geographical necessities arise. The relations of destinations to each other must be as clearly defined as the starting points. Suppose, as an extreme example, that the shortest all-route from St. Louis to the seaboard being to Baltimore, that route fixed the export grain rates without relation to or regard for the routes or shippers from Chicago to New York or Boston, by which means the competitive grain traffic from beyond the Mississippi was controlled, great wrong would be wrought; and St. Louis and Baltimore would enjoy preferences which would ruin other merchants, cities and districts. For this reason section 3 of the Interstate Act declares it "unlawful for any common carrier . . . to make or give any undue or unreasonable preference or advantage" in favor of any "locality." But how can these parities be arrived at except by railway agreements?

Multiply these illustrations by the complications upon 180,000 miles of railway which, in 1895, moved 764,000,000 tons of freight and carried 544,000,000 passengers—a large majority of each being competitive—and the necessity for conference must be apparent

Add the rivalries of oceans, lakes, rivers, canals, and the need to adapt railway rates to such competitions, and the mere mention of these complex conditions should show the necessity for conference, harmony, foreknowledge, and the due observance of equal and reasonable competitive rates, involving "agreements," "understandings," or "conferences."

Associations were organized resting upon the good faith of the parties, to prevent discriminations to favored shippers and to establish not only common rates, but common classifications, rules, regulations, terminal charges, and fares in all the respects which constitute essential elements of carrying equality. They were also, of course, intended to avoid unwarranted depletions of the rates and fares to which the carriers are reasonably entitled.

Have such associations unreasonably restrained com-

merce? Each of the numberless seekers after drawbacks regards a refusal to concede the preference he solicits as a restraint upon *his* trade; but in no other sense can railway associations be so regarded, because their primary purpose is to abolish such preferences and to extend all fair trade. No railway company is so ignorantly managed as to contract or strive for the restraint of business. They labor in and out of season, by fair, and sometimes by questionable, means, to enlarge commerce, to better their own conditions and those of their patrons, and to improve their relations to the public as the quickest way to financial and traffic eminence. They have sought, and should seek in equity and law, to restrain those wrongful practices which are falsely denominated "competition," which proceed from strife, concealment and favoritism, and to correct the endeavors of unscrupulous merchants to defeat the rates, classifications and rules adopted for the common public and railway benefit. They have sought to enlarge rather than to restrain trade by increasing the proportions of traffic carried in through cars, which, being originally taken locally from point to point, encountered transfers, delays, different local rates, bills of lading, classifications, rules and charges. They have greatly accelerated the movement of freight and passengers, made uniform through bills of lading and waybills, issued through tickets and baggage checks, and established common inspections to ascertain that accurate weights were charged.

They have equalized and given to local stations rates corresponding with through points. They have adjusted differences with water routes. They have sought to harmonize rather than to destroy.

Between the Mississippi River and the seaboard, and north of the Ohio River, there are approximately 10,000 points between which through rates and bills of lading are given. A majority of these places being actually or commercially competitive, the various railway interests convene and determine the due rate relations of each to the other. If each railway at each competitive point exercised an individual

right to make its own arrangements regardless of the others, legalized commercial chaos would result. It is due to the railroads, and not to the law, that this anarchy of rates does not now prevail. They have, therefore, done more to remove trade restraints and enlarge and equalize internal and external commerce than all the other policies, laws and agencies of the nation.

Such agreements upon railway rules and rates are therefore more essential to the public interest than are the uniform orders of the Secretary of the Treasury to the collectors of internal revenue and of customs at the different ports, or the instructions of the State Department to its consular agents.

The observance or enforcement of all law is aided, if not accomplished, by associations which coöperate with law. Witness the associations for the prevention of crime, the aid of charity, the diffusion of knowledge, etc. These reach many questions which the law cannot touch. The New York Chamber of Commerce is an influential instance.

It is more needful that railways should have associated relations than that the great cities should have clearing houses for their banks or stock exchanges, produce exchanges and boards of trade, to establish standards of mercantile honor, quality of goods and essential rules of purchase, sale, delivery, etc. They are as necessary in some form as that townships should be subordinate to the county, the counties to the State, and the States to the Federal Union. It is as desirable that the railways should be represented by clearly defined organizations and delegates to provide regulations, tariffs, etc., as it is that the House of Representatives should exist to define rules for the conduct of public business, and to fix and change import, export and internal tariffs. The import tariff is not so important as railway tariffs, being less complex and affecting fewer nations and people; yet it requires months of conference and forbearance to arrive at any desired result. Can the railways with a larger issue do less?

When the Interstate Commerce Law took effect there were over thirty freight classifications in vogue, which are now substantially reduced to four governing schedules.

The value of associations has also been shown in the compilation and issue of statistics. A prominent instance has recently transpired in the contention of the New York Produce Exchange that the differential rates to ports south of New York are unduly great. Certain data were called for in that case which could not have been submitted had not the associations kept them.

There were originally more than twenty corporations between Chicago and New York in the Lake Shore and New York Central route, each possessing (and still retaining) legal powers to charge reasonable local rates and impose local regulations. Conference and associations have unified these routes and rates more in the public interest than to the benefit of the railroads. They have provided for the more speedy transit and greater convenience of the carriage of express matter and the mails. They have equalized the localities on the Atlantic, and have harmonized the competitions of the Pacific Coast points. They have endeavored to equalize routes of unequal facility by a regulated system of differential rates. They make bills of lading issued in Hong Kong redeemable in Bremen.

Associations are the most valuable adjuncts of the Interstate Commerce Commission. Without their aid the Commission cannot possibly solve its problems or accomplish its tasks; with their help it *may* do so. Were the public to choose wisely which to abandon, it had better dissolve the national Commission, because to wipe out all forms of voluntary railway organization—which, more than law, maintain necessary methods of trade—would be to throw the business of the country into a chaos from which the Interstate Commission itself could not evolve order. The advocates of the dismemberment of such associations know literally nothing of the great services they have rendered the public. It is also a delusion to suppose that they limit com-

petition. True railway rivalries are more active under associations than without them, because they stop competition and substitute the higher rivalry of improved facilities and rebates. As well say that the Senate stops intellectual or local rivalry because it is a body representing competitive States.

The opinion of the minority of the Supreme Court in the Trans-Missouri suit states this case clearly as follows:

"That the interstate commerce rates, all of which are controlled by the provisions as to reasonableness, were not intended to fluctuate hourly and daily as competition might ebb and flow, results from the fact that the published rates could not either be increased or reduced except after a specified time. It follows, then, that agreements as to reasonable rates and against their secret reduction conform exactly to the terms of the act."

The following cogent reasoning was added:

"Suppose three joint lines of railroads between Chicago and New York, each made up of many roads. How could a joint rate be agreed on by the roads composing one of these continuous lines, without an ascertainment of the rate existing on the other continuous line? What contract could be made with safety for transportation over one of the lines without taking into account the rate of all the others? There certainly could be no prevention of unjust discrimination as to the persons and places within a given territory unless the rates of all competing lines within the territory be considered and the sudden change of the published rates of all such lines be guarded against."

The minority opinion used these words, italicized as quoted:

"In view of these facts, when the Interstate Act *expressly forbids contracts and combinations between railroads for pooling, and makes no mention of other contracts*, it is clear that the continued existence of such contracts was contemplated, and they are not intended to be forbidden by the act."

Those associations existed when the Anti-Trust Law of 1890 was passed and were not prohibited by it.

The opinion further says:

"It is . . . therefore not to be denied that the agreement between carriers, the validity of which is here drawn in question, seeking to secure uniform classification and to prevent the undercutting of the published rates, even though such agreements be made with competing as well as joint lines, is in accord with the plain text of the Interstate Commerce Act. . . .

"The judicial declaration that carriers cannot agree among themselves for the purpose of aiding in the enforcement of the provisions of the Interstate Commerce Law, will strike a blow at the beneficial results of that act, and will have a direct tendency to produce the preferences and discriminations which it was one of the main objects of the act to frustrate. The great complexity of the subject, the numerous interests concerned in it, the vast area over which it operates, present difficulties enough without . . . it being advisable to add to them by holding that a contract which is supported by the text of the law is invalid, because, although it is reasonable and just, it must be considered as in restraint of trade."

The second annual report of the Interstate Commerce Commission took the ground that traffic associations were not merely permissible, but desirable. It said:

"While the Commission is not at this time prepared to recommend general legislation toward the establishment or promotion of relations between the carriers that shall better subserve the public interest than those which are now common, it must nevertheless look forward to the possibility of something of that nature becoming at some time imperative. . . . Without legislation to favor it, little can be done beyond the formation of consulting and advisory associations."

A careful study of public comments upon the recent decision fails to show that any public or trade body has approved the application of the Anti-Trust Law to railroads. It is also a marked feature of the discussion that the actual users of the railways do not demur to the rates now in force

nor to the rules or regulations applying thereto which are condemned by the decision.

In contemplating the alternative which will be forced upon the railway companies if the Supreme Court decision be maintained, it is proper to say that while pooling has been commended and resorted to abroad, was recommended by the Cullom committee, and has been indorsed by the most eminent railway experts of this and other countries, it remains forbidden here by law. If it continue forbidden, and the railways are to be interdicted from forming traffic associations, what remains for railways and public protection, in their mutual relations? If the railway companies may not meet and agree upon mutual rates, fares, rules, conditions, classifications, tickets, liabilities for persons and property, excursion rates for great public occasions, times of trains, etc., in what condition are they and the public to be left? The resultant differences of condition would introduce more uncertainties into all commercial conditions, would lead to more preferences and discriminations, and constitute a greater restraint of trade than if competitive lines agreed to and published common rates, fares and rules. Forwarders and receivers and travelers engaged in actual contact with this problem all know that practical freedom of trade is not to be obtained by its legal restriction, and that the liberty of reasonable contract, which has, from time immemorial, justified proper agreements, has secured that parity of railway conditions which is the first essential of freedom of trade, the removal of restraint and the stoppage of favoritism.

The case may therefore be briefly stated to be, that the majority in interest of mileage, earnings, dividends and tonnage should control and determine reasonable rates and fares. The recent decision exactly reverses this sound principle, and gives to one and the weakest line, whether in facilities or morals, not only the power which it might formerly assert, but now the apparent legal right and duty to determine its rates, and therefore the rates for all other shippers and railways between the points whereat such line competes.

For no one will pay more than the lowest rates. There is no corresponding instance of the power of a minority in any trade or commercial exchange of the world; and any legal decision under which one company may thus fix the charges for all others, introduces elements of uncertainty, speculation and danger to which the public attention cannot be too frequently attracted, and for which a legislative remedy cannot be too persistently demanded or speedily granted.

Judge Cooley, in his address to the National Convention of State Railway Commissioners at Washington, March, 1891, said:

" . . . One of the most important things to be accomplished in the regulation of railroads is to secure steadiness of rates. . . . I mean the sort of steadiness that makes changes only in the proper direction, and when it does make them does so deliberately, carefully, after consideration of all the interests involved, and after such reasonable notice to the public, as well as to the railroad interests, as will enable due provision to be made by others to prevent heedless loss and injury therefrom."

He also said in an article entitled "Legal View of Pooling," January, 1887: "It will be as wise for the State to encourage and protect whatever in corporate arrangements is of beneficial tendency as it will to suppress what is mischievous."

Everything which is right is assailed by something which is wrong. The maintenance of a right, therefore, always involves the restraint of a wrong; but when, as in the Supreme Court decision, the reasonable rights of carriers are restrained and the wrongs of discrimination encouraged under the cloak of individual action, a reversal of equity and legal precedents is exhibited which merits the searching public review it is now receiving.

Charges of trade restraint against associations which do not restrain but extend traffic; allegations that they discriminate, when they are formed to stop discrimination; transportation agreements adjudged, without proofs, to be entered into to increase rates, whereas they constantly reduce

them; assertions that railway organizations oppress producers, when they really extend the markets for their products; and unsupported assertions of detriment to trade which are promptly disproved by evidence of benefits—these are some of the paradoxes of unintelligent arguments against American railways, which legislatures, trade bodies and courts have too long heeded and which they should now analyze and dismiss.

The Pooling of Railway Earnings.

BY ALDACE F. WALKER.

The subject of railway pools presents two aspects, one theoretical and the other practical. Considered theoretically, it involves the question of competition and the regulation of competition. In some respects the attitude of the railways is the same as that of other industries in relation to this question, and in other respects it is quite different. When the great principle of *laissez faire* became recognized as the proper attitude of legislation to business, a thousand hampering shackles were removed, especially in respect to the matter of competition. When governments decided to let business alone, without repression and without favoritism, competition became the ruler of business methods. During the nineteenth century it has been an accepted theory that the utmost stringency of competition must be insisted upon as essential to the public welfare. There is a sense in which the current phrase is true, that "competition is the life of trade;" and it has very often been declared to be a corollary therefrom that anything which interferes with competition in the slightest degree is contrary to public policy, and must be suppressed by the power of the law. This deduction is by no means a necessary inference.

Like every other thing of value, competition may be excessive. If there is a healthy competition there must be also an unhealthy competition. Food is more than useful, it is necessary; yet gluttony is almost as bad as starvation. One may eat too much; one may drink too much; one may exercise too much. Why do not men perceive that it is also possible to compete too much? Is there not a constant object lesson in every vocation which demonstrates the fact

that excessive competition results in destruction of the agencies of competition? Whenever two merchants compete in their prices beyond what is reasonable, one or the other must fail. Whenever two manufacturers strive each to drive the other from a common market, the logical result is the bankruptcy of one and the destruction of all competition. Whenever two railroads engage in a war of rates with determination and persistence, a receivership must follow, unless forestalled by some consolidation, purchase or lease.

This fact is well recognized by men each in his own calling. They strangely refuse to acknowledge its existence concerning the business of others. It is a fact which no one can dispute, that in all professions and callings at the present day the violence of competition is relieved to a greater or less degree by mutual understandings among the competitors themselves. They do not extinguish competition. On the contrary, they seek to preserve it, knowing that in order for its preservation its violence must be controlled. No industrial use could be made of steam, the most potent and valuable agency of the present day, except through the employment of boilers and cylinders of sufficient strength to hold it down. Electricity could not be harnessed without the insulated wire. Excessive competition runs to precisely similar extremes. It breeds bankruptcies and ruin; it forces sales and assignments. Unless arrangements for its amelioration and control are permitted it will ultimately be found to have disappeared from the face of the earth.

Fortunately, a better understanding upon this subject is now arising. Experience is a sure, though often an expensive, school. The legal principle is fast becoming established by the courts, that contracts between competitors which are necessary to avert personal ruin are not contrary to public policy, but are legitimate and desirable. The courts have perceived that it is a mistaken notion that the public is benefited by pitting two railway companies or two manufacturers against each other until one is ruined, the result at last being to raise prices higher than before. In the

forcible language of Judge Cooley: "It will appear on examination that in all well considered cases upon the doctrine of restraint of trade, the legality of bargaining to limit competition, when it is kept within the bounds of reasonable protection to the parties, is either assumed or expressly affirmed." The true view in which the subject should be considered examines each case upon its own merits and determines its propriety upon its practical results. A combination which only aims to maintain fair and reasonable prices is not contrary to public policy, but the public may properly object to the exaction of excessive gains through extortionate methods. In its theoretical aspect the public welfare requires no interference with business arrangements which are only intended to protect business men in securing fair returns, and to preserve investments and manufacturing plants from destruction.

There are many features connected with the railway service which make it peculiarly sensitive to the force of illegitimate and excessive competition. In the practical matter of conducting railroads the severity of competition far surpasses that found in other industries. Under the present highly developed system of joint rates and through billing, every railroad competes for every class of traffic in every part of the country. The tendency to lower railway rates has a violence of which citizens engaged in other business are wholly ignorant. The strife is not confined to the price of transportation, but embraces facilities, accommodations and time. An effort is made to secure just and equal conditions in respect to the transportation of merchandise, but the points to be determined are almost innumerable. The classification sheets cover thousands of articles, the necessary rules and regulations are many, and the point to point rates on each class are practically innumerable. Each infraction of a rule or variation from a standard rate is a discrimination in favor of some shipper. It puts money in his pocket; it controls the movement of his traffic. For every detail in respect to which competition is felt by manufacturers and producers, the railroad manager feels a thousand.

Again, the railroad plant is in its nature peculiar. It is constructed at vast expense, and when constructed it can only be used for a single purpose. The capital invested is fixed and its application can in no way be changed or modified. Moreover, the use is of a public nature, and States have assumed to demand the continued operation of railroads even though an actual loss results. They may pass from the hands of stockholders into those of bondholders, and even then may pay nothing on the bonds. A receiver is provided who will borrow money to continue their operation. If a company to which a bankrupt company is a rival endeavors to continue its work and pay its interest and its dividends, it must do so in competition with one whose managers expect to pay no dividends and have no interest charges to provide. There is no such thing in the railroad world as a transfer of capital to other uses, while the effacement of capital is frequent. It is a matter of necessity that competition which is so likely to be destructive should be restrained within limits which will admit of reasonable and fair prosperity.

When revenues fall off expenses are retrenched, repairs are neglected, the physical condition of the property runs down, accidents occur, the service becomes less satisfactory, the interests of the public are neglected or ignored. The true public welfare requires the preservation of railway revenues at a point which shall insure every condition of safety and every condition of efficient service. For this purpose it is necessary that capital invested must remain in the field. The margin is a narrow one and is constantly being passed in all portions of the land.

Railway management is also differentiated from other kinds of business in the method employed for the establishment of the price of service. A retail merchant knows what he pays for his goods, adds a fixed percentage, and marks his goods accordingly. His customers may take them or leave them, as they please, and if he sees fit to shade his price for a sale it is wholly competent for him so to do.

He is subject to no regulative statute. In our boards of trade the price of wheat, or other similar products, of provisions, of cotton, is modified by a daily contest. A man with wheat to sell offers it at eighty cents a bushel. The buyer offers seventy-nine. The seller comes down an eighth and the buyer advances a quarter, and presently among the numerous buyers and sellers on the floor one or another jumps the gap and the price for the moment is made. This constant fluctuation of values between the buyers and the sellers presents a method of establishing prices which is absolutely different from anything found in the railway service.

It has been supposed by legislators, and assumed by the public, that railway managers establish their rates by determining the cost of service and then adding thereto a reasonable remuneration for the capital invested. This basis is that to which the mind naturally turns in considering the reasonableness of railway rates. But there is obviously no such a thing as a buyer and seller of railroad transportation meeting upon a common floor, where the seller asks what he considers a fair price, while the buyer offers what the transportation is worth to him. On the contrary, the price of transportation must be fixed in advance, known to all and reasonably permanent. To the end that it shall not be extortionate, legislatures interfere with their supervisory control, and every unreasonable rate or unjust classification becomes a matter of attack through the agencies of Congress and of the several States. The tendency is always and inevitably downward. Every consideration employed calls for a reduction in the rate. Facilities afforded by water routes, by the great lakes and the rivers, by competing carriers subject to less exigent necessities, having lower capitalization, whose service is less expensive, whose traffic is in a less degree subjected to legislative control, either State or Federal, whose return loads are more abundant, whose floating debt demands a present income, and by numberless similar considerations urgently require that rates be reduced to meet pressing conditions. A large increase of traffic always war-

rants lower traffic charges. The stimulation of the business of each line individually is promoted by lower rates so long as other lines do not meet those rates. The practical establishment of railway rates is through a constant downward pressure against which the only opposition lies in the good sense of the superior officers in the management.

Other considerations might be mentioned, but enough has been said to show the differences which exist between railways and other business enterprises in the matter of determining the charges to be made.

Coming now directly to the practical question of the railway pool, a student of the subject naturally first inquires, what is its object? The object of the railway pool is to secure to each line a fair share of all that business for which it is reasonably entitled to compete, and thereby to take away some of the inducements for rate wars and for illegitimate discriminations between individuals and communities; in other words, the exercise of a restraining influence against rate wars and secret rate cutting. While these evils are prejudicial to proper railway management and destructive of railway interests, they are at the same time equally prejudicial to the public. It is a very superficial view of the subject which holds that the public interest always requires the lowest possible rates, or which believes that reductions in rates are even presumptively for the public welfare. What the public really needs is the persistent maintenance of efficient, safe and reasonable transportation service, with rates properly adjusted as between competitive points of production and consumption, always free from individual discrimination and steadily permanent from year to year. A reduction of rates below the limit thus indicated is not for the advantage of the public but to its harm, and the general scale of rates now in force throughout the United States may be asserted, without fear of intelligent contradiction, to be low; so low that, with the exception of a few cases which an expert could count upon his fingers, further reductions would deplete revenues beyond the limit of reasonable compensation for the services performed.

The questions of complaint for the past five years have been almost universally those of relative rates, founded upon a comparison between different points where the proper adjustment can be reached as well by an advance in one rate as by the reduction of another. The average charges for railway service are now about one-half of the rates charged twenty years ago, and the undue advancing of railway rates has become impossible, being subject to legislative control. The stability of rates has become the point of the highest importance to the patrons of carriers. Contracts are everywhere made in which the transportation charge is a factor, and unexpected changes in rates always produce injurious results; manufacturers, miners, merchants and consumers become involved in a sea of uncertainty unless the rates of transportation can be relied upon as a constant element. Every rate war reduces the value of articles previously purchased and transported, and its progress is marked by speculation in all directions at the expense of legitimate business enterprises. Every secret variation from the established tariff gives an advantage to some favorite shipper at the expense of his less favored or less clamorous competitor. These principles were clearly recognized in the Interstate Commerce Law. The cardinal principle of that law is found in the requirement that definite and reasonable rates shall be established and made public, and that when such rates are so established and made public, they shall be maintained without deviation or shadow of turning.

Summed up in a single phrase, the reason which was considered to require the establishment of a national law for the regulation of railways was unjust discrimination. The principal things denounced by that law were rebates, drawbacks and similar devices by which carriers may collect or receive from one person a greater or less compensation than from other persons, and undue preferences between individuals, localities and different descriptions of traffic. In every railway pool the object aimed at is the non-discriminative maintenance of railway rates. The evils of personal

favoritism are doubtless more apparent to railway managers than to shippers themselves. Railway managers earnestly and strenuously desire to put them down. When the Interstate Law was under consideration the point was distinctly brought out in the preliminary debates that the object of the pooling system was the same as the object of the regulation proposed to be made by statute. Nevertheless, so much prejudice and public opposition existed to the practice of pooling (largely founded, it may be conceived, upon the name itself, involving unpleasant associations and savoring of stock gambling and the race track), that an absolute prohibition of pooling was made. The choice was clearly presented to Congress between an effort to put down these admitted evils by punitive process—that is, by fines and imprisonments on the one hand, and on the other the continuation of a system under which it was for the interest of the railways themselves to obey the law proposed to be enacted.

It was believed by honest men, senators and representatives, that when a law was made forbidding rebates and discriminations under penalty of fines and imprisonments, it would be adequate to terminate the evils thus attacked. Has it so proved in practice? Are railway rates steady to-day? On the contrary, has there not been another practical demonstration of what has so often been seen before, that men cannot be made good by the mere enactment of a law, especially when no moral obliquity is perceived and where practices of long standing have led innumerable shippers to believe themselves justly entitled to special considerations and special rates? It is not easy to make either the public or the soliciting agents of railways perceive that their customers are criminal. There is no doubt about the correctness of the policy which demands the abolition of discrimination and the equality of railroad rates, but the enforcement of this policy through the law of crimes can hardly be called a monumental success. Perhaps half a dozen convictions have been had in different parts of the country.

Something has been done at different times in the way of prevention through fear, and in the way of coöperation among men who dislike to be thought lawbreakers. But, notwithstanding the restraining statute, there have been periodical waves of demoralization sweeping over the land which the law has been wholly inadequate to prevent or repress. In prohibiting the pooling of freights, Congress discarded its most effective weapon for dealing with the evils which it attacked.

In reaching this conclusion it should not be claimed that the pooling of railway earnings is a sure cure for railway evils. It should not be forgotten that this system of itself involves certain evils which, however, are much more formidable in respect to the railway side of the case than as affecting any public interest. It cannot be denied that a general pooling system has a tendency to encourage the construction of illegitimate, unnecessary and piratical lines, not called for by any just demands for business, and designed only to deplete the revenues of existing roads. It must not be forgotten that prior to the passage of the Interstate Commerce Law, when a pooling system was somewhat prevalent, the evils complained of were quite apparent, and that the pooling system had not put them down. There were reasons for this, however. Pooling agreements were not generally recognized as enforceable in the courts, and carried no sanction excepting that of mutual good faith, which was easily weakened through suspicious misrepresentations or financial depression. Moreover, at that time there was no law against rate cutting. If the present statute against manipulations of railway rates were to be combined with the establishment of conditions whereby it would be made for the interest of railway companies to maintain rates and observe the law, then for the first time the necessary conditions would go hand in hand, and a reasonable degree of protection to all interests might be expected. It is clear that something must be done. Fluctuations in rates have been extreme since the passage of the law, and secret rates have been quite universally conceded

to exist. As a preventive of unjust discrimination the Interstate Commerce Law in its present form has practically broken down. Prosecutions do not succeed; public sympathy is with the violators of the law rather than with its defenders. No plan has yet been suggested under which these conditions can be changed except that of the pooling of railway earnings. This device has been employed not only in the United States, but in England and in every other civilized nation where railroad competition exists. It is the universally recognized alternative to transportation monopoly, as a basis for the maintenance of just and equitable railway service. In France six railway companies divide the territory of the republic. In the United States 600 railway companies have a common rate-making power throughout the land. The American system contemplates the preservation of distinct and competing corporations. The existing legislation in our country has a directly contrary tendency.

Cases are frequent in all parts of the country where from three to ten railway lines compete for common business. The conduct of traffic railways requires that rates in every such instance be either absolutely identical or be differentiated by agreed concessions. Unless rates are the same all the business goes to the lines whose charges are least, except when the difference is compensated by the inferiority in the service performed. In other words, when rates are equal, or equalized, which they must necessarily be, all lines which are inferior in any respect will find that traffic leaves them. These lines have been built for the purpose of competing, and business they must have. There is only one way by which they can secure it, namely, by lower rates. If their tariff is openly reduced, it is at once met by the stronger competitor, a renewed reduction leads directly to non-remunerative rates. Open reductions, therefore, are an absolutely impossible method for securing the traffic necessary to preserve the existence of lines which are in any respect less good than the best. The only alternative is found in secret reductions, by the payment of commissions, rebates, salaries, damage

charges, etc. These may be unjust discriminations, and are against the law, but a starving man will take all chances. The law forbids secret rate cutting, and at the same time practically compels it. Congress in effect gives to half the roads in the country a choice between breaking the law and corporate bankruptcy.

It is proposed to meet this by reintroducing a well understood system under which the stronger roads may assure to the others a fair and ascertained share of the common business. No other method than this has been suggested to meet the requirements of the present situation. These requirements to-day are extreme.

It is not believed that intelligent railway managements object to proper regulation. On the contrary, it is their desire to conform to all requirements of law and conduct their business, so far as possible, without friction and in harmony with the wishes of the business public. There is no desire apparent to exact unreasonable rates, and if there were there is no possibility of accomplishing such a wish. On the contrary, there is a general and hearty desire apparent in all railway circles to secure in some way the extinction of illegitimate methods and the establishment of fair and reasonable rates which shall be honestly and honorably maintained. Unless this result can be reached through proper amendment of the present defective law, its entire repeal is only a matter of time in its necessary effect upon public opinion. In an amendment which should permit the making of pooling contracts, their legality would be recognized and their judicial enforcement would become possible. Such an amendment should submit the operation of such contracts to proper control and review, and in case their working should be found to result in unreasonable rates or to promote unjust discrimination and preference as between localities, or otherwise to interfere with a proper governmental control and regulation, authority should be provided for their immediate cancellation.

The subject should be treated as affording a method

whereby it shall be possible to more vigilantly and successfully enforce the regulative statute. The measure should be coupled with other brief amendments providing for the prosecution of the corporations themselves, and providing for the prohibition of illegitimate methods not clearly within the provisions of the present law. Taking these things together, it would no longer lie in the mouths of the carriers to say that Congress has made it impossible for them to act in harmony with the statute in the maintenance of established rates. The opportunity to combine for the enforcement of the law would be willingly embraced, and the experiment of governmental regulation could be tried under conditions which would afford some prospect of success. No one can give a positive assurance that success would follow. In spite of all provisions that may be made by agreement or by statute, railway competition must necessarily continue extreme and severe. The result ultimately may be either a widespread consolidation of railway systems or a dismemberment of existing routes. Either of these results apparently should be deprecated. An effort should be made to maintain the existing and distinctively American railway system, preserving its advantages and minimizing its defects. Anything is better than an ineffective and inoperative law. The experiment of regulation by the General Government through its control over interstate commerce has never been fairly tried. In order to bring this experiment to a successful issue the amendments above indicated are needed and are needed promptly.

The Industry of the Rail.

BY E. B. THOMAS.

There exists in the public mind an apprehension that the railways are opposed to the public interest, and that any legislation which restrains railways is of necessity for the good of the people at large. This mistaken idea has had much to do with shaping the State legislation that has in many instances so severely crippled railway enterprise, and, in a large measure, this impression was prevalent when, ten years ago, Congress took its first step in dealing with the railway problem. Looking back for twenty years it is difficult to recall a single legislative measure, National or State, proposed, advocated or enacted for the benefit of the railways, whereas, during that period hundreds and even thousands of propositions have been brought forward, many of them unhappily enacted into laws, which seriously injure railway property, and cause great loss to those who have invested their money in this form of security.

Railways are not only the largest employers of labor direct, but they are enormous purchasers of supplies. If the railway system of the United States were even fairly prosperous the amount of money it would annually distribute over this broad land would exceed \$1,200,000,000. I say fairly prosperous, because in 1894 the amount actually disbursed came to within \$40,000,000 of this amount, but in 1895 it lacked \$50,000,000 of it. Now, \$1,200,000,000 will buy a good many things and supply a good many people. Comparing our railways with our National Government, which is regarded as a pretty big business, we find that the Government disburses on an average about \$400,000,000, or one-third as much as our railways.

Take the Erie Railroad system as an example: With a gross income of about \$30,000,000 per annum, it distributes in wages among about 30,000 employes, over \$16,000,000, and for material nearly six millions, the greater part of which goes to the labor producing the manufactured articles. The remainder of this income is utilized in paying taxes (which amount to over three per cent. of its gross revenue), and in paying its fixed charges, such as rents and interest on its bonded indebtedness, leaving practically nothing for the stockholders.

This is an average result obtained from about 2,000 miles of the 180,000 miles of railroads in the United States, and from which it will not be a difficult problem to calculate the general result.

The total number of railroad employes in the United States is about 800,000, and the total expenditure is over \$725,000,000. Taking as an average five individuals to a family, we see that there are some 4,000,000 of people directly dependent for their existence upon the railroad industry, and I feel safe, therefore, in saying that in the conducting of transportation the railways distribute more actual money to a greater number of individuals through more numerous channels and over a wider area of country than any other industry.

Great and far-reaching as are these disbursements, the \$250,000,000 per annum expended in late years, in what may be termed keeping this property in good repair, give employment to hundreds of thousands of track laborers, skilled laborers in our rail mills, locomotive, car and machine shops, and so on through an immense range of trades and occupations. Even during these bad years, and with uncertain rates, the railways are putting \$70,000,000 per annum into their roadbeds, \$33,000,000 into new rails and ties, and over \$15,000,000 into new bridges. The fences to keep off cattle and the signposts to warn people at railway crossings cost over \$3,500,000 per annum, or more than the legislative branch of the National Government. Even the news-

papers and printers are deeply interested, for \$8,500,000 were spent in printing and advertising. The United States Post-office Department is considered an important business, and yet the aggregate expenses of that department in 1895 were \$90,544,322, while for repairs and renewals of locomotives, passenger and freight cars, our railways expended in the same year \$93,707,989. A moment's thought will make it clear that nearly all of this vast sum is annually spent for mechanical labor of all kinds, for nearly every branch of industry enters into locomotive and car building. In times normally good you may safely figure on upward of \$100,000,000 per annum for this purpose as a regular part of keeping the rolling stock of railways up to date and in good repair, to say nothing of an additional ten million for other mechanical work incidental to keeping the plants of transportation in good running order. I only refer to these facts for the purpose of showing how intimately the successful conduct of these great properties is interwoven with other industries of the country, and how impossible it is to injure our railway properties without at the same time seriously injuring almost all other occupations and curtailing the prosperity of the entire nation. It has been aptly stated that unless the people are prosperous the railroads cannot flourish. Is not the converse equally true? Can the people prosper when so large an industry languishes, when its 800,000 employes are working only part time and its forces are reduced to the lowest possible limit—repairs and replacements postponed to better times?

Not only do the continued attacks on railways thus fall heavily upon the industries of the country at large, but they bring about a disturbance of commerce, and cause men who would otherwise put their money into coöperative industries to withhold it, and thus cripple existing and prevent new enterprises of all sorts. Instead of benefiting the public, much of the so-called railway legislation has been a decided detriment. It creates uncertainty where certainty should exist. It breeds many of the ills (such as discrimination in rates) which it

seeks to remedy, and has done much toward bringing bankruptcy and ruin to nearly half the railway mileage of the country. It throws a doubt over all railway enterprise, and makes securities speculative instead of sound and safe investments for the savings of the masses. In presenting these statements I am making no apologies for bad and reckless railway management, nor am I extenuating in the least the overbuilding and paralleling of railways, which, under the guise of competition and the conferring of benefits upon communities, have in many cases been little short of high-handed crimes. In many of the cases money which could have been better spent in improving existing roads, thereby enabling them to increase their facilities and reduce the cost of service to the public, has been sunk in building roads for which no necessity exists. As the country steadily progresses, however, there will be less of this, and a change from the methods of the legalized highwayman to the safer and sounder methods of good business. I believe that in no period of our railway history has there been a stronger endeavor on the part of the managers of railway properties to conduct them along conservative lines with a view of building up and developing the legitimate business of transportation.

"Protection to American Industries" has ever been a cardinal principle in this country. They have almost invariably received fair treatment at the hands of the national legislature. Why should an industry employing more labor—and a greater proportion of American-born labor—in which the capital invested is greater, which expends for supplies in this country alone sums far in excess of any other industry, be debarred from fair and legitimate treatment and become the prey of unscrupulous demagogues and dishonest politicians, and the target for newspaper abuse? In a new country, under new conditions, and with a rapidity that has astonished the older world, we have built up a railway system equal in mileage to all the railways of the rest of the world combined. A system vast and complex and traversing half a

hundred States and Territories, each jealous of its own interests and with legislative control within its own domain. Unlike most countries, these enterprises have been projected practically at will and with no supervision as to whether the roads were needed or not. Is it surprising, therefore, that under such conditions mistakes have been made and complications arisen that at times seem difficult to overcome? Yet the men responsible for the work have used their best judgment, given their best thought, and many of them the best years of their lives in honest endeavor to make the most of the enterprise in which they have embarked. Are not the purposes of this industry as necessary and legitimate, are not its owners entitled to as fair a return upon their investment as other industries? Are not its officers and employes as honest, efficient and patriotic as those in other avocations? Why not give them a fair chance? Out of the complex problem presented there has been solved the question of moving a ton of freight a greater distance for a less sum of money than any other country. Our passenger service, in speed, comfort, regularity and safety has been the admiration of the world. Let legislatures, the press and the public give fair support to this great industry, helping to conserve instead of to destroy, and the railroads of America will make such progress as will wring admiration and praise from even their unfriendly critics.

I believe railroad officers are no less honest than men engaged in other occupations, and as upright in their dealings as other business men. They are often placed in trying positions. They see the property they are responsible for plundered by unscrupulous legislators, and they are hardly to blame for meeting these attacks by using all the means at their command to prevent the destruction of their property. In short, in doing so the railway official is merely performing his duty to the security holders and to the public, who suffer when these properties become insolvent. In the main we can point with pride to achievements which, when compared with similar accomplishments in other coun-

tries, speak well for American enterprise, ingenuity and capacity for railroading. We have the cheapest freight rates in the world, and when the fact that 99 per cent. of all Americans travel first-class is considered, the cheapest passenger service. American railway facilities are as good and expeditious as those of any country, and we give better accommodation to the public. These facts are admitted by our foreign competitors. The wonder, therefore, should not be that our railway system is poor, but that under such unusual conditions we have been able to make it as uniform and effective, and at the same time as cheap as it is.

Far from trying to evade the laws, many of which have been unreasonable and unjust, the railway managers of the country have done everything in their power to comply with the spirit, and oftentimes the letter, even when it withered and destroyed. Legislative demands have been made for air brakes, automatic couplers, steam heat, gas light, for lowering tracks and crossings, and a thousand and one things necessary and right, which should come in time, as population and business grow up to the railways, but which have been forced upon them irrespective of the fact that the steady demand for reduced rates has, together with depressed times, drained their resources to the utmost limit. It is well to remember that the railways have been carrying additional burdens by reasons of public demand for additional facilities during this whole period of declining rates.

Though the present outlook is far from encouraging, and the recent decision of the Supreme Court declares that all attempts at uniform action are illegal, we seek for no legislation that will increase rates or add to the burden of the general public. The proposed pooling bill recently introduced in the United States Senate by Senator Foraker of Ohio, means at the best a sort of breakwater to prevent general demoralization. It is the best means thus far devised to legalize freedom of agreement between competing lines, so that all shippers may secure just, reasonable and uniform rates. In the national legislature of ten years ago

the necessity for uniform action regarding railways was recognized, and this measure is only taking up the question where Congress laid it down and carrying the legislation a step further. To hold these properties together and to give the people the full benefit (as I have shown) of a disbursement reaching nearly twelve hundred million a year, we must get nearer a uniform management. The work of the railways must, in short, be carried on with uniformity and method. This can best be done by the several railway systems working as they do. Under the law, as proposed, when the rates are finally agreed upon by the competing roads, and passed by the Interstate Commerce Commission as reasonable and just, power should be given to the roads to enforce them. This is a reasonable and fair demand, and one that Congress should at once grant.

The proposition which has been suggested by some theorists for enlarging the Interstate Commerce Commission and permitting it to initiate rates would be a fatal mistake, and a system based upon such an idea vicious in the extreme. The railways not only have the ability, but the facility to make rates. It is expert work, requiring judgment and a thorough knowledge of all local conditions. To have the rate-making power removed to Washington and absolutely fixed by a commission, no matter how able or how honest, would work incalculable injury. It would be far better for the Government to purchase the railways and assume the whole responsibility than for the Government practically to undertake the regulation and management of the property of private individuals. This is undoubtedly the most mischievous proposition thus far evoked by demagogues and anarchists for the wiping out of the capital invested in railway enterprises. It would simply be unendurable, and lead to rate complications heretofore unheard of, even in our present imperfect system. The possibilities of corruption would be tremendous; the pulling and hauling at Washington for favored rates for special communities would bring the whole system down with the weight of its own folly and impracticability.

In the bill referred to the public, the shipper, the railway employe and the railways have all been fairly considered. If it becomes a law the results must be beneficial to the whole country, because our railways penetrate all parts of the republic. Congress should, therefore, approach it in a spirit of fairness and justice, and not with temper and political prejudice. It is an honest effort to adjust satisfactorily difficulties that have grown up by reason of the magnitude of our transportation industry and the newness of our common country.

While the legalizing of pooling will do much at the present moment to better the condition of the railroads, neither that nor any other legislation which can be enacted by any political body will prove a panacea for all the ills affecting it. Unrestricted building has created a transportation system beyond the ability of the present population to adequately support. Hasty, ill-considered and harsh legislation has added its burdens. The introduction of rapid ocean carriers, the telegraph, cable and telephone have created new and as yet not fully understood commercial conditions, bringing our railways not only into connection, but into competition with the whole world and its markets. The problem is a complex and delicate one, but its solution, approached from the standpoint of fairness on the part of the public and its representatives, and aided by the experience and tact of the railroad officials, is far from hopeless, and with time and experience must result in mutual understanding which cannot fail to benefit the whole country.

More now than ever before is there a great and serious responsibility resting upon every legislator, every public man, everyone who is in any manner looked upon as leading and shaping public opinion; more than ever before must each endeavor to do his full part toward restoring to this country that confidence and stability in its industries, without which disaster and uncertainty must still prevail. That leader, be he in the White House, in Congress, or in business life, who is sufficiently wise and patriotic successfully to conduct such

a movement, cannot fail to receive from his country its lasting gratitude. Confidence in the stability of our great industries fully restored, "trade, that calm health of nations," will again resume its wonted activity.

The People and Their Railways.

BY E. T. JEFFERY.

So much has been said and written in recent years upon the transportation question that it is difficult to deal with it in an interesting manner and almost impossible to say anything new about it. Yet it is a subject of vital importance, is still unsettled and must be considered, discussed, and examined from all points of view until generally accepted practice and legislation and judicial decisions and a line of precedents make certain the doubtful problems of to-day and mark with greater precision the path that shall be followed in the mutual interests of the public and the carriers. For I take it for granted that these interests are mutual; that it is impolitic and injurious to unduly burden the public for the sole advantage of the carriers and equally so to unduly oppress the carriers for the benefit of everyone else. I question, however, the possibility of severely oppressing the carriers without affecting all other important interests in the Republic. In fact, I am strongly inclined to affirm that there are many illustrations before us of languishing industries and stagnant trade because of the impoverished conditions of the great transportation companies. There may be a difference of opinion as to the causes which produced these conditions. I freely accord to everyone the right to exercise independent judgment as to the causes, for it is a right I claim for myself. But as to the conditions being of an unsatisfactory character I think there can be no difference of opinion. Were they satisfactory there would be no discussion of the transportation question, nor diverse views upon it, nor public hearings before commissions and courts, nor presentation of it in the newspapers, nor bankruptcies of carriers, nor efforts by the solvent

ones to avoid the same fate. As I have said before, there may be difference of opinion as to the causes, but there cannot be as to the existence of conditions unsatisfactory to all concerned. Nor is it necessary for me to state with much detail before so enlightened a body of men the nature of the conditions to which I refer. To do this would be to assume a superiority of information and intelligence, which a knowledge of my shortcomings and limited attainments warns me I do not possess. I am honored by having been invited to speak to so distinguished a gathering. Your attention for a short time is a compliment I do not merit, though I deeply appreciate it, and if at the close of my remarks you are unable to say that I have helped a little in working toward a solution of the problem you will, I trust, be able to say that I am honest in thought, candid in expression and sincere in purpose.

I shall not burden you with many figures and statistics, for you have all and more at your command than I have. We know that our country has a railway mileage as large as all the rest of the world and that tonnage and passengers carried are enormous in volume. We know that when Abraham Lincoln and Gen. Grant were born there was not one mile of railway in the United States. We know that the rapid growth of our railway system in less than two generations stimulated emigration, agriculture, mining, manufacturing, trade and commerce of all kinds. Our nation has grown in that time from infancy to lusty, vigorous manhood. Education has become general, intelligence widespread, wages have advanced, independence has become almost aggressive, home comforts have increased and life has been made more desirable than ever before in any country or in any age. All this and much more we know, glory in and proudly proclaim to the world. We know that in three years our railways carry as many people as are estimated to inhabit the earth and that these people are safer in trains than when traversing the thoroughfares of large cities. We know that the fastest time ever made by a railway train was on an American road; that the most luxurious passenger cars, the most powerful locomotives, the most capacious freight cars, the

largest systems of railway, the lowest rates for freight and passengers, the greatest number of bankrupt companies and the most dissatisfaction generally about transportation matters are found in this beloved republic of ours. So, having the best of every nation in all these things and in a great many others, such as the greatest chain of inland lakes, the greatest extent of navigable rivers, the greatest area of farming lands, the greatest growth of cereals, the greatest railway centers, the longest stretches of continual rail travel without reaching our boundaries, the greatest production of the precious metals, and above all, the greatest individual liberty, it behooves us to see if we cannot, in righteous ways, alleviate the confessed troubles of all, including the carriers themselves, from the unsatisfactory conditions connected with transportation. If we cannot be entirely happy, let us be as happy as we can.

I am not before you to defend the rail carriers. I freely admit that they have done many things they ought not to have done, but how, under the circumstances, could it have been otherwise? They sprang from nothing to 185,000 miles in less than two generations; from nothing to 700,000,000 tons of freight annually; from nothing to over 500,000,000 passengers annually; from nothing to nearly one million employes; from nothing to over ten thousand million dollars capital; they felt their way quickly because they had to; they had no precedents, no text-books, nothing in the way of a landmark to guide them. Judgment is fallible and human nature is weak, and the great wonder in all minds ought to be that mistakes were not graver, more numerous and less defensible than they were.

In 1850 there were 9,000 miles of railways in the United States, which were multiplied by twenty in the succeeding forty-five years. One-half the railway mileage of 1850 was in the New England and Middle Atlantic States, and the rest was scattered over other States east of the Mississippi River. Illinois, now in the lead with her 10,500 miles, had then but 111 miles. These facts are well known to you all, and I mention them now for the sole purpose of holding before us the con-

struction of 171,000 miles of railway in forty-five years with all the wonderful development that the stupendous expenditures and unparalleled work made possible. Railway managers faced new and vital questions and carried greater responsibilities than they realized. Emigration preceded slightly and followed densely transportation facilities. Farms were opened, cities were born, trade was started, mining was undertaken, industries were planted and unprecedented activity prevailed throughout the land. In this the managers of railways were necessarily leading participants. The growth of our country in population, agriculture, mining, manufacturing, commerce and wealth during the period mentioned, is evidence that in the main these men did their work well. Rates, classifications and regulations were gradually formulated for the continuous carriage of thousands of things over thousands of routes in all directions. Sections widely separated competed in remote markets. Cities vied with each other in securing trade, and waterways were vigorous in controlling commerce against the rail carriers. Manufacturers at times made active war upon each other. Foreign nations competed in our markets with home industries. These peculiar, far-reaching and potent factors brought the carriers into frequent struggles among themselves. While, as a rule, desiring to be reasonable and just and aiming to conserve as best they could the general interests dependent upon them as well as those especially intrusted to them, railway managers at times failed in both objects and were condemned equally by both interests; the commercial which they sought to aid and the financial which they were expected to reward with a reasonable return upon investment. To accentuate the difficulties parallel and competing lines were in some important instances constructed, without the slightest public necessity and solely for the pecuniary profit of the projectors. These divided the traffic with older lines and in doing so reduced rates so that the revenue derived by two carriers from the carriage of a given volume of traffic was less than when it was carried by one. The fixed expenses per unit of traffic

were of course greater with two carriers than they would have been with one, because the denser the traffic on any line the less per unit is the proportion of fixed expenses.

I need not recite the reductions made voluntarily or otherwise by our carriers from year to year in transportation charges. They are all of record, are well known to you and are generally understood by intelligent persons. In tabulated form they have been printed frequently for a number of years and bear witness to the continued shrinkage and to the low prices at which transportation is now sold. Nor need I recite the achievements of American managers in economical operation. They stand unrivaled in this respect. American rail carriers sell transportation at lower prices and move freight at less cost per mile than the rail carriers of any other nation. The profit per unit of traffic, where any is found, is less than in any other country. But we have reached a level below which it is not possible to go even to a moderate extent in cost of carriage and consequently in price of transportation unless the prices paid for labor throughout the land are materially reduced. The rails, ties, bridges, roadway, buildings, equipment and transportation expenses are all mainly labor in one form and another. The difference in value between the ore in the ground and the steel rail in the track is mostly labor. The difference in value between the coal in the earth and in the locomotive furnace is largely labor. The enhanced value of timber in the bridge, car or cross-tie over what it was in the forest tree is labor. So we see that labor cannot remain unaffected if transportation prices are to be materially reduced, for maintenance and operation expenditures must fall proportionately, and labor constitutes by far the greater part of them, either directly or in an indirect manner, as already indicated. The situation is confessedly a grave one. It is entitled to broad and statesmanlike consideration, for on the one hand are millions of workmen whose interests may be injured, and on the other vast investments of capital which may be affected disastrously. In truth, the latter contingency carries with it direct and immediate

injury to the great army of American workingmen. But the situation does not receive broad and statesmanlike consideration throughout the land. The gravity of it is not realized. The far-reaching and depressing effects of even a continuation of present transportation conditions are not generally admitted. Facts as to this are not understood, or, if understood, are misstated. Demagogues acquire temporary prominence and political preferment by indiscriminately assailing the carriers, misleading still farther the public mind and building up with greater force public prejudice, and, I suppose, this will continue until it is comprehended that the vital interests of great masses of votes are jeopardized. Then these same demagogues, or their counterparts, will espouse the cause of these voters for their own aggrandizement; will defend the corporate employers they now attack and insist that their ability to pay fair wages shall not be impaired. The working classes of the country, the mass of laboring, struggling, thinking voters will, in time, demand that the capital which affords employment to them, which pays them their wages, which maintains scales of wages higher than are paid in any other country, shall not be shorn of its ability to properly repay them for their toil. The great fact will be clearly perceived that the wages of nearly one million railway employes are more stable, less subject to variation, than are those of any other class of labor, and that they bear favorable comparison with those paid all other classes. The men themselves are intelligent, trustworthy, independent and influential, and they will secure and hold the sympathy and support of all classes of labor in their efforts to uphold the general average of wages, and in making these efforts they will necessarily sustain just prices for transportation to the end that labor directly employed by the carriers and indirectly dependent on them, as hereinbefore explained, will not be made to suffer.

Although our railways are generally in fair physical condition, and the leading ones exceptionally good in the older and more densely populated states, there must be great expenditures upon them in future years to make them meet in a satis-

factory manner the growing requirements of the public. There must be thousands of miles of second main track constructed, terminal facilities in leading trade centers must be enlarged, station facilities in growing communities must be added to, locomotives and cars must be increased in number and larger ones substituted for nearly one-half those now in use. Bridges of steel and masonry must replace wooden structures, tracks must be raised or lowered, as the case may be, in cities of importance, so that streets shall pass above or below them, and public highways must be carried over or under tracks outside of towns and cities. These important and necessary works, and many more which I will not mention, will require very large expenditures. The question therefore presents itself of how they shall be met? If paid for out of earnings rates must be advanced slightly above the present averages, or tonnage and travel must greatly increase in volume at the prevailing rates. If sales of new issues of stocks are to provide the money the outstanding issues must first be made valuable before attempting additional ones. If more mortgage bonds are to be placed, the credit and standing of those heretofore marketed under more auspicious conditions must be improved or else the new ones must be sold at a large discount.

The plain and indisputable fact is that at prevailing rates and with the present volume of traffic our railways generally cannot be materially improved nor their facilities substantially increased out of earnings. But the expenditures will in time be required, because improved fixed plant, higher speeds, heavier locomotives, larger freight cars and greater safety at highway crossings are growing necessities. In mechanics speed and power are synonymous terms, and with the higher speeds smaller trains must be hauled, hence a larger number of them must be provided to move even the present volumes of passenger and freight traffic.

The relentless wars of capital against capital have done much to bring about present conditions. A parallel and competing line of railway is not built by demagogues, it is not constructed by hostile legislation, it is not conceived by boards of

railway commissioners. It is deliberately planned and constructed by capital, and, for a time at least, is operated for the purpose of securing by fair means or foul a share of the traffic in transit in the territory traversed. The breaking down of rates, revenues and previously invested capital in such cases has been done by capital itself. This destructive work cannot be unloaded on legislative bodies and commissions and courts and newspapers and demagogues. The responsibility rests upon capital. If a broader and more statesmanlike course is essential for the conservation, on just lines, of the interests we are deliberating upon, the reasonable protection of vested capital from the attacks of capital is necessary.

Why ought new, unnecessary and parallel lines of transportation be permitted? Why ought the public to grant them charters? Why should any railway be allowed to come into existence unless it be shown before a lawful and duly constituted board that it is a public necessity? The public is better served between given points by one or two first-class lines than by several poor ones. Why should traffic be burdened with the additional fixed expenses of new and unnecessary railways? Why should the wages of masses of workingmen dependent upon existing lines and the aggregations of money invested in them be jeopardized when public necessity does not require nor even suggest their existence? If further legislation is conceded in the mutual interests of the public and the carriers it must prevent this unbridled use of capital against vested capital. The most advanced legislation here and in other countries debars the building of new railways unless a competent tribunal has decided that public necessity demands them.

The relentless wars of capital against capital have been carried on in other ways, so far as railway investments are concerned, than building parallel and useless lines. Old established lines with large local traffic have rivaled each other in rate reductions, secretly and openly, in their efforts to control what seemed to individual judgment the share of traffic

each ought to have. This action was not forced by legislative bodies, was not decided upon by courts, was not inaugurated by commissions, not put in force by demagogues. Secret as well as open contracts for traffic, and private rebates thereon, were made and paid by the corporations themselves. The managers, the directors, the stockholders of these organizations performed these acts. They were corporate acts. It is no use to mince words regarding these things. It is no use to attempt to deceive the public mind. If stockholders objected to these procedures in the past they could have turned out their directors, dismissed their managers and put in control those who would not do these things. The plain truth is that these methods were used by those who thought themselves a little smarter than others of their class and who sought to obtain undue advantage over them. Certain portions of invested capital sought to take from other capital a portion of the traffic carried upon its lines of railway. It was capital warring against capital with the usual and inevitable results to all concerned. I do not criticise those who have acted in self-defense, but I do blame and denounce the aggressors, those who have destroyed values, wrecked properties of great magnitude, ruined innocent and confiding investors and to an extent precipitated present conditions. Systems of railway that were honestly built, the capital of which represented actual money invested, have been reduced to narrow straits; other systems which have through bankruptcy been reorganized on a low basis of capitalization have been still further impoverished, and all because of the opinions entertained by a few men in corporate service that they were a little smarter, a little abler, a little greater and a little wiser than others of their class and occupation. It may be said with apparent force that if capital sees fit to war on capital in this manner and with these results it is no concern of the public. It has been argued that the public is benefited thereby. But this seems to me to be a narrow view and an incorrect conclusion. I take it to be the broader and wiser course for the public to require that public corporations shall be curbed in folly and

wrong-doing, and sustained in wise and right-doing, so that any individual, an innocent and ignorant holder of their securities, shall be protected.

The views I have just expressed apply with equal if not greater force to railways controlled by receivers. Some of these properties in the hands of the courts and managed by officers of the courts have been foremost in making private arrangements, and paying secret and unlawful rebates, and in inaugurating so-called railway wars to the injury of the solvent carriers and without benefit to themselves. One of our leading railway presidents, Mr. M. E. Ingalls, in some recent remarks before the St. Louis Railway Club, on "The Turning Point in Railway Reforms," expressed himself in regard to this in the following language:

"One of the strange anomalies of the times, and one which shows how the public conscience is debauched and has lost its regard for the law, is the fact that there seems to be more trouble to-day in maintaining tariffs and obeying the law in the cases of railways in the hands of receivers than in any others. In other words, some of these railways are still reported to be securing business by secret contracts and illegal rebates. I have no question but that these practices are unknown to the court. One of these days some judge will wake up to the situation and put an expert upon the accounts of his receiver, and then we shall get an example that will be useful. An officer of the court surely should not be a violator of the law."

A corporation is given existence by the sovereign people, they give it powers and privileges, it goes before the world as the offspring of the people, it invites public confidence and the money of the people. People of all classes, the laboring with their small savings, the shopkeeper with the proceeds of his trade, the bankers and merchants with their wealth, the widow with her dower, the orphan with a legacy in trust—all classes and all conditions are invited to partnership in this public enterprise of a public corporation, and I urge that it is incumbent upon the commonwealth to see that its corporate off-

spring is wisely as well as honestly conducted. The stockholders, or partners, or co-operators, call them what you will, cannot object to having all possible safeguards thrown around the management of their affairs. If they are honest persons they will support the enforcement of honest methods, if wise they will welcome wise management, if candid they will honor candor even though it is enforced. If dependent for their daily bread on the income from their investment they will bless the power that protects them and procures a reasonable and reliable return. I am aware that in this I am going somewhat farther than most men are willing to go, but I aver that experience warrants the suggestion and entitles it to consideration by students of economic questions.

I have thought for many years that the corporate plan of conducting extensive business and prosecuting great enterprises is the practical application of the co-operative idea. In these days of intercommunication the world over by telegraph, railway and steamship, ten thousand persons remote from each other can unite in a great undertaking which is beyond the power of any one man. Time was when this could not be done. Now by concentrating the money and brains of many for the consummation of a great purpose success is achieved. Works which are practical in no other way are in this manner made comparatively easy of accomplishment, the world moves forward and mankind is benefited. How can possessors of large and small accumulations of money co-operate in a more efficient way and share more equitably the proceeds of joint investment? How can labor and capital properly co-operate, share in responsibility and join in directing and controlling large undertakings except on the corporate plan? If the plan is imperfect in detail let us perfect it. If it affords opportunities for dishonesty let us throw safeguards around it. If it permits making fraudulent statements let us prevent it. If under it the avaricious and selfish and grasping can and do endanger the small interests of partners of average means and intelligence let us curb them in a judicious way. If corporations be too secretive let us

make them candid. The abuses and vices, the faults and follies of many men do not make us condemn all mankind, but on the contrary they invite us to study human nature, to combat the wrong and vicious and work out reformation. Let it be so as to corporations. Reform their conduct, prevent their abuses, restrain their dangerous tendencies, but cease wholesale denunciation of the only plan by which civilization can be advanced, progress be made and peace and universal brotherhood be attained by a community of interests in a commerce world-wide.

The corporate plan is the outgrowth of the efforts of our race through the centuries to make possible the achievement of worthy things which in past ages were impossible. I have dwelt a little on this branch of the subject because the railway transportation business is conducted of necessity upon the corporate plan. The requisite capital is so vast, the operations are so extensive, the service is of such a peculiar character and is so closely linked with the public welfare that no other plan seems feasible, hence the incorporation of transportation companies, the right of eminent domain accorded them, the liabilities imposed upon them and the legislative control exercised over them.

It would be an unnecessary occupation of your time for me to enter into a discussion of the commercial course of the carriers in the past, their attitude in regard to public control of them, their alliances and dissensions in their attempts to better themselves, their just complaints, their present poverty, and their fears for the future, and, moreover, on some of these points we might not fully agree. You have at your command all railway history and legislative enactments; you have on file in Washington and at the capitols of the different states you represent all, or nearly all, the agreements, the tariff sheets, and the rules and regulations of the carriers. You have sat in many public hearings, have heard many arguments from all sides, have passed judgment in innumerable cases, and I am sure have become satisfied that there are at least two sides to the questions which have been presented

for adjudication. I will therefore avoid dwelling at length upon them, and after a rapid glance at the tendency and the efforts of our generation will limit myself to endeavoring to present a few suggestions upon which we may, and I believe we will, all agree, and thus, perhaps, a glimpse may be had of a possible course which, if followed, should lead to pleasanter fields and clearer skies than those we now wander in and under.

We come now to the regulation of carriers as practiced by duly constituted commissions and by the courts of the land in decisions handed down from time to time upon the various questions submitted to them. The fundamental principles of our national law are that all charges on interstate commerce shall be reasonable and just; that there shall be no unjust discriminations in favor of individuals, firms, corporations, cities or sections of country; that all charges shall be open to the public and shall have reasonable stability; that classifications of articles and rules and regulations for their carriage shall be reasonable; that carriers shall not unjustly discriminate in interchange with connections on traffic destined to points beyond termini; that dissimilar circumstances and conditions may justify a lesser charge for a longer than for a shorter haul, and that the national commission shall pass upon alleged violations of these principles and pronounce judgment subject to appeal to the courts. The basic principle is that all charges for transportation must be reasonable and just. This really comprehends all that follows, because unreasonable or unjust discriminations affect comparative charges on traffic, and unfair classifications and unjust rules and regulations burden it to an extent that may cancel the benefit of just and reasonable charges. I think, therefore, that we may stand upon the proposition that the fundamental or underlying principle is that all charges must be reasonable and just, even when different circumstances and conditions, as for instance, direct water competition, justify a lesser charge for a longer than for a shorter haul. Under the opinion of the Supreme Court, March 22, 1897, this is supplemented by a decision that

carriers of interstate commerce must not combine for the purpose of maintaining even reasonable and just charges. On our great network of railways and throughout our vast territory, and with our 700,000,000 tons of freight, and 500,000,000 passengers annually, our innumerable routes, and our through billing and ticketing, all interstate charges must be reasonable and just, but the carriers must not agree between themselves to make and keep them so!

Except as to the Supreme Court opinion mentioned, which is new, and was unexpected, the underlying principle of our national law governing carriers was recognized before it was put in statutory form. Common law required that this public, or semi-public service, should be performed for reasonable and just compensation; that is, just and reasonable alike to the served and the servant. Not more favorable to the served than to the servant, nor more favorable to the servant than to the served; but just and reasonable to both. It carried into the large affairs of life the admitted truth that "the servant is worthy of his hire." More than a quarter of a century ago some of our States sought to put in statutory form this idea, but with results, in some instances, so extreme as to almost confiscate the servant's property. But in the older States, as a rule, this extreme has been modified, so that we can say the basic principle stands for enforcement that all charges must be reasonable and just upon State traffic; that is, traffic having origin and destination within a State, as well as upon interstate traffic. Two-thirds of our States have commissions empowered to practically apply the principle, as best they can, and some of these exercise in addition a supervisory jurisdiction over the physical features of railways and the accommodations and facilities and service offered for the use of the public. The trend of public thought for a generation has been toward statutory regulation of carriers and supervision of them by boards of commissioners acting under authority of law. Yet the basic principle of all this is, as I have before stated, that charges must be reasonable and just for the

service performed by the carrier for the public. This opens a vast field of inquiry to those who are charged with determining scales of reasonable and just charges under different circumstances and conditions throughout the land.

The problems before commissions have been perplexing in the extreme. They have been presented under strong public feeling generally on one side and have been met under disadvantages on the other. They have been interwoven with politics, and, in fact, have often been political issues. Partisanship has run riot over them and abuse and denunciation have often taken the place of facts, figures and judicial reasoning. The complex problem of determining in a scientific and judicial manner reasonable and just compensation for given services between given points has often been obscured by party feeling for political purposes. Injustice has been done in this way to the carriers, which, added to the results of their own follies, prove to be too heavy a burden for the strongest and best to bear. There are railways that have cost, for all their fixed and rolling plant, an average of more than \$200,000 per mile, and others that have cost \$10,000. There are systems with their terminals that cannot be duplicated for twice what they cost, and others that might be reproduced for less than they cost. There are nearly level lines, with tonnage and travel ten times as dense as others of like gradients. There are mountain systems, with steep grades, sparse population, small tonnage and very heavy operation expenses. There are railways paralleling water routes and railways nearly a thousand miles from navigable water. Some of our systems have maximum grades of 20 feet per mile and others of over 200. Some have a maximum curvature of three degrees and some 16 in standard gauge and 25 where gauge of track is three feet wide. Some are subjected to floods and inundations and others to snowslides and avalanches, and still others to all these combined. Some furnish luxurious transportation for passengers at speeds of 50 to 75 miles per hour, while others can provide only doubtful accommodations at less than one-half these speeds. Some have a pre-

ponderance of passenger and others of freight traffic. Some have four excellent main tracks to insure safety and dispatch, while others have but an inferior single track, which is maintained in passable condition with difficulty, by small traffic and from narrow revenues. The securities of many railways represent actual money expended, while those of some others stand for fictitious values. Some corporations are candid in their statements and others are secretive; some have large floating liabilities which they show, others have them and hide them, and still others have none at all. Some few have had fairly steady revenues for the last five years and others have had reductions of 30 per cent. and more. Some use coal at a cost of five and six dollars per ton and others at a dollar or less, because of proximity to mines; some pay 30 and others 60 cents for cross-ties; some, owing to locality, pay 25 per cent. more for steel rails than others, and in some sections of the country labor is paid 20 per cent. more than it is in others. I mention these few of the many things that enter into a consideration of what is reasonable and just compensation for the public servant to receive so that I may illustrate the difficulties that confront a commission or a court in determining fairly and intelligently an issue presented.

It may be said that I state only some of the considerations that must move in behalf of the carriers and none on what is wrongfully designated as the side of the public; but for reasons given in the early part of my address, it seems to me that both sides are the sides of the public. It is evident that a compensation which is reasonable and just for the carrier to receive is equally so for the public to pay, and if, in view of the nature of the service performed, the circumstances and conditions of the traffic and the burdens resting on the servant, a compensation is fixed on a reasonable and just basis, nothing more need be said. However, I am well aware that our stagnant trade, lagging industries, large surplus of cereals and low prices for them, the large number of unemployed and the feeling of general dissatisfaction at exist-

ing conditions, have much to do with the issues brought before railway commissions. These honorable bodies are confronted constantly with the query, are the carriers doing all they can and ought to do for the farmers, miners, manufacturers and merchants? So the serious question of reasonable and just compensation for a carrier is to some extent obscured by the desire to have carriers act as nurses to sickly industries, unproductive farms and stagnant commerce, without much reference to some of these interests lacking strength and vitality to stand on merit and sustain themselves if they can on business principles, as the transportation companies must do. When trade is depressed the carriers are often expected to stimulate it; when manufactures decrease it is supposed that carriers can broaden the field of consumption, and when farm products are low in market value the carrier is requested to reduce charges, to the end that the farmer may receive better prices. The usual result has been that trade, manufacture and agriculture remain practically unchanged, unless improved under the unerring law of supply and demand, while the carrier becomes nearly or quite bankrupt by these well meant, philanthropic, but futile efforts.

Too often have honest rivalry, open warfare or secret rebates precipitated calamitous struggles for traffic. Too often in the past have manufacturing and mercantile interests suffered for a time from the disturbance of trade channels by heedless, unexpected and unnecessary reductions of rates. Too often have secret contracts for traffic been made at reduced rates with subsequent announcement of them, instead of previous notice, as demanded by law. Zealous, shortsighted, scheming men have taxed their ingenuity in devising ways to obtain a little extra traffic by secret arrangement and at the same time apparently comply with the provisions of the Interstate Commerce Law requiring three days' notice of rate reductions. Even the charges approved by commissions as being reasonable and just have been reduced openly or in secret by certain carriers for improper ends. Associations of railway officers, from presidents down, have been formed to eliminate

these disturbances, both before and since State and National legislation, and to maintain with some stability established tariffs under agreed divisions of traffic or revenue between competing carriers. Agreements of various kinds without the pooling feature have been made for the same purpose, with money penalties following bad faith. Differences became so frequent, contentions so rife, rivalry so heedless and rate wars proved so injurious to all interests, that at last permanent arbitrators for matters in dispute became indispensable. Statistics of nearly all competitive business were accurately kept for the information of carriers and arbitrators, and to enable the latter to reach equitable conclusions. The machinery for intended fair dealing was nearly complete and quite comprehensive. The efforts in this behalf were made in good faith and with worthy motives by a large majority of carriers, and yet the dissatisfied minority often nullified them by secretly or openly breaking the compacts they made. The lowest rates given for selfish ends were regarded by the public as proper and just charges for like service for all shippers, irrespective of the cost of service or the peculiar and unsatisfactory, and, I may say, inexcusable conditions under which they were temporarily given. Again and again leading and conservative carriers returned to the apparently hopeless task of maintaining reasonable and just charges, of dealing equitably with all interests and localities and of saving from bankruptcy the vast aggregate of capital invested in American railways.

I am personally acquainted with many of the executives of our leading transportation companies, and know beyond question or doubt that they have been for years and are today sincere and earnest in their efforts to accomplish what I have stated. The Interstate Commerce Law, after some hesitation, has been taken by them as a text; in support of it new associations were formed; to strengthen it new agreements were made; in pursuance of it tariffs were published; under it many public hearings have been had, and step by step the conservative, law-abiding and experienced railway

managers have sought to weave a fabric of reasonable and just transportation charges throughout the republic. As this work progressed they associated themselves still more closely for the objects of the law and to maintain the schedules of charges made in pursuance of it. They have declared themselves unequivocally committed to the basic principle of the law that all charges must be reasonable and just, and they have embodied this commitment in various agreements. At all times ready to respond to the summons of the National and State commissions, and attend hearings and obtain rulings for or against them, the conservative carriers have sought to secure from commissions and courts a line of opinions that would mark with some precision the charges which, under different circumstances and conditions, might be regarded as reasonable and just. I am aware that in some instances representatives of transportation interests have been "backward in coming forward," but as a rule the attitude and course of action have been as I have stated.

I have briefly, hastily, and in unsatisfactory order outlined the condition of the public mind toward and the course followed by carriers from before a railway existed until the present time. I have said that common law and usage required that reasonable and just compensation should be charged for public or semi-public service; that this crystallized into statutory law after the birth of rail-carriers; that it led to State commissions, with more or less power, in a majority of our States; that it culminated in a national law and commission; that many carriers, afraid of results at first, reluctant next, and obedient at last, joined in earnest efforts to conform to law and publish and maintain thereunder reasonable and just charges, and, finally, that the Supreme Court, in a recent opinion, has decided that, under a law subsequent to the act regulating interstate commerce, carriers cannot agree between themselves to maintain even reasonable and just charges on interstate traffic, although reasonable stability in charges is essential for the prevention of unjust discrimination.

The general situation is unique and peculiar. The people

assert that all charges shall be reasonable and just; in their national legislature they enact a law requiring them to be reasonable and just; commissioners appointed in pursuance of law insist that they shall be reasonable and just; the courts decide that under the law they must be reasonable and just; the railway corporations, through their managers, affirm that they desire to make them reasonable and just, but a Supreme Court decision says that it is unlawful for the carriers to agree between themselves to maintain what the people demand, Congress has enacted, commissioners insist upon and the carriers themselves desire. I can see many opportunities for differences of opinion as to what are reasonable and just charges; in fact, railway history is replete with many painful and ruinous illustrations of opposing views between carriers on this very point, so we need not wonder when commissions and ordinary citizens take issue with them. But when competent public authority, after careful investigation and patient hearing, concludes and states that, under the circumstances and conditions, given charges between given points are not unreasonable nor unjust, it seems proper and right and good business policy, and best of all, good citizenship, for those who must publish what are admittedly just and reasonable charges, to agree between themselves to maintain them until commissions and courts modify their opinions about them. If the law prohibits such agreement, then the law itself is not founded on common sense. I have deep reverence for the Supreme Court as a body, and profound respect for the members individually. I have faith in the average wisdom of our national legislature and in its desire to advance the interests of our people. I am an upholder of law and of good government, and an ardent supporter of constituted authorities. I believe in our republic and its institutions, and the principles upon which it is founded. I am proud to be an almost invisible fraction of so free, so enlightened and so great a people, and therefore it is with diffidence that I say, so soon after the Supreme Court opinion of March 22, that our methods in business and commerce, in public policy

and private enterprise, ought to be grounded on common sense. I have yet to learn that it is contrary to common sense to agree to maintain what is reasonable and just in relations between man and man.

I trust I am not trespassing too long upon your time nor bearing too heavily upon your patience; but the subject is of such magnitude and importance, is so complex and so generally misapprehended, that it has seemed proper for me to make a modest effort to bring to your attention some salient points in the interest of all concerned. Not because I doubt for a moment your familiarity with them, nor for the reason that I possess superior knowledge, but because I have been engaged in railway vocations for forty years, from apprentice boy in a machine shop to president, have at heart the public welfare, the legitimate and vital interests of labor, the desirable safeguards for invested capital, a love of fair-dealing and justice, an abiding faith in the principles of our government, and, moreover, I come to you from a State that at present entrusts its transportation interest to the common sense, fairness and integrity of its carriers, unrestrained by statutory provisions, but governed by common law. I feel deeply my responsibility to the public for the confidence reposed in me, thus far, as a railway manager, and because I have always endeavored to consider in a dispassionate manner the commercial as well as the corporate aspect of the transportation question. Observation has taught me that where all interests aspire to attain an acknowledged desirable result and differ only in detail as to the best method of procedure for accomplishing it, free interchange of thought, candid discussion and calm deliberation by representative men in conference together are the surest means for uniting in a common conclusion. Nor does it weaken in any way this method, nor impair its application when some representatives are from the governing class and others from the governed. In truth, this method of procedure is more appropriate in such cases, under our republican form of government, where all powers spring directly from the governed and those in authority are for the time being the servants of the people.

You have already perceived the suggestion I am about to make, that joint conferences be held between commissioners and railway managers for the purpose of determining how they shall unite in presenting to the people reasonable, just and stable transportation charges, without discrimination, as contemplated by law. How the people and the law-abiding carriers shall be protected against law-breaking ones. How violators of transportation law can be speedily brought to bar. What legislation, if any, is necessary to accomplish these ends.

I beg that you will not think lightly of the suggestion and dismiss it from your minds as a chimerical, impracticable or impolitic one. The highest ambition of every citizen, in private occupation or in public position, should be to sustain the majesty of the law and aid in its enforcement. If a public desire is put in statutory form and fails in controlling as intended, because of incomplete legislation, it stands to reason that additional legislation should be had to the end that the original object will be attained.

Bear in mind the basis upon which my suggestion rests and pardon me for repetition; common law, running through generations, that transportation charges shall be reasonable and just and free from unjust discriminations; statutory provisions by a majority of our States and by our national legislature formulating the usage of generations in regard to public carriers; the appointment of commissioners by State governments and by the National Government to make effective these transportation laws; the inability thus far of the State and Federal governments, and their boards of railway commissioners, to enforce the laws and to bring law-breakers to bar in the courts; the desire of all conservative, self-respecting and law-abiding rail carriers to comply with these laws and give to the public reasonable and just and stable rates without unjust discrimination, and their powerlessness to do so because of the disregard of law by some shippers and some carriers and their freedom thus far from well-merited punishment. Before any so-called railway laws were enacted

in this country the rail carriers tried as best they could by various kinds of joint agreements to establish and maintain what seemed to them just and reasonable rates, but they failed in their purpose. State governments have tried to accomplish the same object on traffic within their respective States; the Federal Government has made a comprehensive effort for a similar purpose in respect of interstate traffic, and many conservative railway managers have endeavored to co-operate with the Federal and State governments in accomplishing the end in view, but thus far these efforts have been unsuccessful.

The fabric of rates throughout the land is so peculiarly woven that one part cannot be materially strengthened or weakened without affecting the whole. The rates on traffic within States are so closely interlocked with and dependent upon rates on traffic between States, and at times on that with foreign countries, as to make their readjustment coincident in the generality of cases. Hence, co-operation on right lines between the State boards of commissioners and the national board is desirable, and conferences and coöperation between State and interstate carriers are necessary. There are instances where three or four hundred out of our 185,000 miles of railway have seriously disturbed rates from St. Paul to the South Atlantic coast, and from St. Louis and Chicago to the Gulf of Mexico and the Pacific Ocean. A State, either by legislative enactment or through its commission, can affect the whole fabric of rates unless the action is so palpably wrong as to warrant the intervention of a court of competent jurisdiction. Therefore, I say that coöperation on just lines between the Federal and State boards and between the various State boards is almost essential.

The conditions, when regarded geographically and commercially, point with unerring finger to the absolute necessity of conferences and understandings between carriers, coöperation between boards of commissioners, and concert of action between commissioners and carriers for the fulfillment of the laws requiring reasonable and just rates, free from unjust

discrimination, throughout the land. So I return to my suggestion that railway managers and commissioners have joint conferences for the object already stated. But for fear it may be thought that I speak with some degree of authority for the transportation companies, it is well to say that I alone am responsible for the suggestion. I have not counseled with a single president or manager upon the subject, and I doubt if one of them in the entire country is aware that you honored me with an invitation to address this convention.

The carriers are not fully agreed among themselves as to what ought to be done to perfect legislation in the mutual interest of the public and themselves, and perhaps the honorable commissioners are similarly conditioned. If duly appointed committees of representative railway men from the various sections of the country covered by the different traffic associations would meet and confer, they would, no doubt, reach a reasonable conclusion, which could be entrusted to a sub-committee empowered to ask for a conference with the Federal commission *in relation to interstate legislation*, and with representatives of State boards *as to State legislation if it be necessary in connection therewith*. As there would be no vexed question at issue, no matter of rates to pass upon, no transportation principle to determine, I am persuaded to believe that the Federal commission would accord a conference, or a series of them, if need be, for the purpose of endeavoring to formulate a recommendation to the national legislature, so fair and just to all concerned as to insure its approval and its crystallization into law. It may take time and patience and protracted conferences to come to a joint conclusion grounded upon justice and common sense; but can time be spent more advantageously and beneficially and can united effort on any other great question produce more satisfactory results to the country at large? I shall not venture any suggestions about the additional legislation that is desirable, beyond stating that it is clear to me agreements between carriers for maintaining reasonable and just rates under the approval of the commissions should be legalized, and when entered into the people and the

carriers who may be injured by violations of them should be able to sue and recover damages in courts of law; and perhaps the incorporation of joint traffic bureaus or associations or clearing houses should be authorized and persons who manage them be held directly responsible to commissions and amenable to law as recognized agents of carriers so associated together. I purposely refrain from speaking farther upon this point because I do not know the views of those who have broader minds, larger responsibilities and greater opportunities for formulating just and proper recommendations.

Federal and State laws for the regulation of railways, rulings of National and State commissions and the general methods of interstate and State carriers should be substantially alike in all important matters. The basic principle governing charges is the same the country over, as heretofore shown and for the reasons stated; therefore all legislation should be upon the same lines to accomplish the same end, regardless of whether carriers have a preponderance of interstate or of State traffic. What is most reasonable and just to all interests, State and National, should be attained, and the machinery of government, of transportation companies and of traffic associations should be worked in harmony with each other for the benefit alike of the public and the carriers. Not for the purpose of oppressing the carriers, but to protect them equally with all other interests in the republic. There are large areas of our country to be opened up to settlement, and transportation facilities will be their leading necessity. Capital must be enlisted in this behalf or else we shall stand still as a nation. For these enterprises, and for all other material development, capital and labor are the factors, and to succeed they must work in close coöperation under laws equally just to each and inspiring to both. The sentiment or legislation that cripples either will injure both.

In conclusion, Mr. Chairman, permit me to invite this distinguished body to hold its next convention in the capital city of the Rocky Mountain State, the fair city of Denver. I can insure you a cordial welcome, warm hospitality, sunny

skies and a balmy atmosphere. The Denver & Rio Grande Railroad will be at your service, and the gold, silver, iron, coal, lead and copper mines of Colorado will be of easy access from its rails. You need have no hesitancy in accepting, for you will be most welcome guests of the citizens, and the railway company I represent does not seek any favors at your hands. You can view mountain scenery that is beyond description, pass over summits two miles above sea level, through deep cañons and gorges so narrow that the railway can scarce find room, you can climb grades of 211 feet to the mile, can ride on standard-gauge or 3-feet gauge or 3-rail track, just as you prefer, and observe that which is unique and interesting and exceedingly instructive in railway operations. I thank you all for the attention you have given me.

An Address to Railway Men.*

BY E. T. JEFFERY.

Mr. Chairman and Friends:—I am encouraged to stand before you by the observations I have made during the last hour or hour and a half to the effect that those who sing and those who play are called to perform twice, while those who speak are let off with one performance. I observed that even our eloquent friend McClellan was not called to the floor a second time.

Our chairman has voiced the sentiments of my heart in saying that it is a pleasure for me to be here with you. No matter where I am, nor what business perplexities surround me, my best thoughts and kindest feelings, next to those belonging to my family, go to my railroad family. To me it is a matter of pride to know that this railroad family is so loyal, appreciative, intelligent and zealous in its action, that in nearly all instances where the interests we all serve are in jeopardy the family stands together as one man, and I believe the wives and daughters stand together as one woman. This condition does not prevail, however, on very many railways of the land. It ought to become a general one. The condition should prevail everywhere where men are associated together as officers and workmen in furthering the interests of a great enterprise, but, as I said before, it is not so except in rare instances, and then only because there is a fellow feeling pervading all hearts from the highest to lowest and a sense of community of interest pervading all minds in the organization. The welfare of one is the wel-

* Delivered before the D. & R. G. Railroad Y. M. C. A., at Denver, Colo., March 16, 1897.

fare of all, and the welfare of all should call forth the strongest efforts and best thoughts of everyone and build the highest standard of character, because only with these high standards can go the best thoughts and the best deeds.

When young I was not a good little boy like Brother Sample, but I wish I had been. I think it was perhaps because he went to Philadelphia, which is always good, and I went to Chicago, which was then very bad. In fact, at times, thirty-five to forty years ago, I felt very much as did a young fellow I was reading about the other day. He was approached by a worthy and enthusiastic evangelist intent on winning him to Christ and making him a better young man. He said: "Go away; don't you bother me now. I have fifteen dollars bet on Corbett, and I don't want to get religion until after the prize-fight, on the 17th of March." Not, my friends, that I was especially interested in prize-fighting, please understand, but I mention the illustration to show how little at times in those days I realized the serious things of life and the grave questions that weigh often on my mind now. I thought in those days that for a railroad man to be religious impaired to some extent his railroad ability. Why, how could a man pray and run a locomotive engine? How could a man worship God and shovel coal? How could a man have his whole heart intent on the religious exercises of the coming Sunday and drive spikes in railroad ties? Was it possible to control a large number of men except it were done by driving or swearing? These were the immature views that floated through my inexperienced mind then and they remained with me quite a number of years.

As I grew older, saw more of men and society, thought more of the great economic questions, read more of history, understood organization better, I realized that all through nineteen or twenty centuries had come down irresistible in force the idea that the world cannot move, that men cannot accomplish the best results, that society itself is endangered if this religious element, this religious instinct,

if you please, this strong and almost overpowering religious feeling is not in the main supreme. Do you know of a civilized nation that does not insist by law, and by force if necessary, on religious teachings throughout its army? Do you know of a navy the world over able to cope with well equipped governments, upon the decks of whose ships religion is not taught and the example set in the teaching by the chief officer in command? As I saw these things, as I comprehended the breadth, the power, the scope, the force of all this, I gradually grew into the idea that all organizations of men and women formed for worthy objects or for the prosecution of great business enterprises are more capable, more trustworthy, more able to reach the results for which an organization is made if the spirit of religion and morality and temperance and virtue prevail than if it be otherwise.

It is a most singular line of thought, if you allow your minds to dwell upon it, how through these centuries behind us human nature has been struggling to higher ideals from year to year, generation to generation, century after century, and to-day with all written history behind you, all legendary history behind you, all the efforts of thinkers, prophets, inventors, discoverers, the power of God behind all, human nature is just as dissatisfied; it is just as far from its ideals. There is not one mind here to-night that is any nearer the ideal of Christian character than were some minds nineteen centuries ago. We are still struggling. The world will always struggle in the direction of being better, nobler, purer, more worthy of the Father who is over us all.

I know that to-day in our own ranks there are those who think that these efforts made in this humble way are foolish, unnecessary, that the management has a hobby, that it is a little cranky on religion, that it might put its fifteen or sixteen hundred dollars a year to better purpose; that it might put a few more men at work and pay that money to them to enable a few more wives and children to get a little sustenance and clothing. I don't wonder at these thoughts, these reflections; they are perfectly natural. I

have passed through that period myself; but this influence that here is sought to be directed through the entire ranks of the Denver & Rio Grande and other adjacent railroads, if it can be made effective throughout these systems, would benefit thousands and thousands of men and their wives and their children, and by lessons of thrift, care, economy, temperance, right living, add to the company's prosperity and enable also those who have employment, however limited, to contribute out of their little surplus a sum, however small, and thus, from the charity of their hearts, help those who need assistance. Thus in the end the entire community, not only the railroads themselves and their employes, but the entire community, and in fact a whole State is benefited. These matters must be taken in the broad, not in narrow lines.

Here is absolute unsectarianism. It is not desired here in these rooms and baths that you shall be as good a Presbyterian as Brother Hobbs, or as excellent a Methodist as Brother Gilluly; it is simply desired, as has already been said, to make better men; to create character; build it up; strengthen it, to the end that all receive the benefit of the influence, and in receiving it profit not alone themselves but the interests we as employes all serve. My experience of over forty years in railroading, from apprentice boy to president, has convinced me beyond all question of doubt, beyond all fear of disturbance by argument, beyond all care for criticism, that these influences do make men better as engineers and firemen, conductors and brakemen, shop hands, track hands and every other class of workmen upon a railway, and in this way the corporation we serve is benefited as well as ourselves.

I do not like to bring in selfish considerations; it is not the worldly standpoint we should consider these things from, but aside from all the considerations I have heretofore urged, waiving all that I have said and that has been said by others so ably on this platform to-night, I will affirm that from the purely selfish standpoint of greater loyalty and

efficiency of a working organization the railway company that has a moral and religious set of men is better than its neighbor that has an irreligious and immoral set. The results are better. The net results at the end of the year in dollars and cents are greater.

I am willing to stand anywhere in the United States and challenge contradiction from all quarters and all sides to that assertion. I would be willing, if I had time, to stand on any platform in the United States and enter into any public debate on the affirmative side of that proposition, and, as I said before, the conclusions have come to me year by year through over forty years of association with railway men, commencing as apprentice boy in the machine shop to the position I have the honor to hold now, and which, let me say, you and others on the Denver & Rio Grande enable me to perform the duties of with success.

I wish, Mr. Chairman, to make another suggestion before taking my seat. There is a common idea prevailing amongst railway men that the results on a railway are wrought out by the president and a few chief officers. There never was a more erroneous idea entertained. I can suggest, I may order, I may lay out policies, but the three hundred thousand tons of coal burned are not burned under my direct supervision; the three hundred locomotives belonging to the company are not run under my supervision; the six hundred and fifty thousand cross-ties cut in your mountains here and put annually in the track are neither bought nor cut nor used under my personal supervision, nor, in fact, I might say, is the necessity itself for those ties determined in detail by me except in a general way. Whether a certain freight train takes 66 per cent. or 70 per cent. of its full tonnage or 100 per cent. of its full tonnage is a matter that I individually cannot control, and yet on these particulars the results upon a railway are mainly worked out, and how? By intelligent, loyal, attentive, capable locomotive engineers who see that the coal is used economically because they love the company they serve; because it deals justly

with them; because it will not tolerate wrongs to them; because it will uphold them in the right. They endeavor to keep their engines out of the shop longer and thus reduce the cost of repairs all they can. They are saving and economical in oil and waste and other supplies. They say justice has been dealt to us; we are honest, upright, moral men. We understand what is due from one man to another and in return for justice shown to us we will deal justly and fairly and give to this company and its management the best that within us lies. And the firemen emulate the example of the engineers and work in the same direction, actuated by the same spirit, and so do the conductors in helping to move all the tonnage they can at the least cost and in guarding against accident to person and property in transit across these dangerous mountains and through these deep cañons by night and by day. And so, too, with the track-men, maintaining good track, doing the best they can, the reasons actuating them, the motives moving them being in the main those I have already outlined.

Now, I believe that everyone of you here will admit that I have stated plain, undeniable facts. I want you to accept the conclusion, if you will, that in considering and determining on right lines what is due between man and man, what is due by corporation to employe, what is due from employe to corporation, in trying to look with clear-cut vision as to what is the right thing to do, the man who is actuated by Christian spirit and imbued by Christian love and who is guided in the matter by eighteen or nineteen centuries of Christian faith and teaching, is the one most competent to correctly decide, not these only, but also the course to take where injustice is done by the management, and the conclusion will be that where such injustice is done, if the aggrieved will, in a manly, straightforward and kindly way, show where the injustice lies, the management will endeavor to have it removed.

My friends, I cannot tell you how glad I am to stand before you, to look into your faces, and to have the oppor-

tunity of saying these few words. I do not see many of you often, but my thoughts are with you daily. Wherever you are, wherever a Denver & Rio Grande man is, wherever a loyal, and good and true railroad man is, there my kindest thoughts and my deepest interests repose. I hope that in all your work you will be blessed with health and strength and with the sustaining power of God.

Railways and the Public.

BY T. B. BLACKSTONE.

I.*

In States in which railroads have been constructed at the expense of non-residents, the railroad history of the last quarter of a century presents some remarkable features.

It is not our purpose to attempt to predict what the people of the States we have referred to will hereafter do in the matter of constructing railroads or in the enforcement of reduced railway rates, but it is an old maxim that history repeats itself, and if the history of organized popular control of railways in such states is to be repeated, it should be of use as a warning, especially to those who may be requested to aid in the construction of new railroads or the reorganization and repair of bankrupt roads.

In the matter of railway construction and control, the policy of the people, which is still continued in many States, had been so clearly manifested seventeen years ago that your company decided that unless it should thereafter appear that it had been changed, it would be unsafe for it to make further extensions of its railway, and that its policy should be that which it has since pursued in fortifying its position with reference to such conditions as it has been compelled to contend with.

It was long ago held by the Supreme Court of the United States that "the charter of a railroad corporation is a contract within the meaning of the contract clause of the Federal Constitution," but for many years the people of the States to which we have referred apparently have failed to give due

* Being an extract from the thirty-third annual report to the stockholders of the Chicago & Alton Railroad, for the year ending December, 1895

consideration to the fact that each railroad company, before commencing the construction of its railroad, entered into a contract with each State in which its road, or any part thereof, is located, and that upon the faith of the State so pledged the company expended a very large amount of money in constructing and equipping its road.

One of the provisions in all such contracts is, in substance, that the State will always permit, and the railroad company shall always have, power to charge and collect reasonable rates for transporting persons and property, and in all cases at the time such contracts were made it was doubtless understood by both parties that the railway rates then considered reasonable should thereafter be so considered, unless new conditions should arise under which the railroad company, by charging lower rates, could obtain a reasonable aggregate compensation for the use of its capital and for its services as a common carrier.

And, especially, as to all such contracts made twenty-five or more years ago, it was understood from their very nature and object, as clearly as though it had been stated therein, that the State, in providing for such public highways as railroads are held to be, would cause no more of them to be constructed than it intended the people should support by payments for their use.

It was also understood that railroad companies would be afforded such protection as is involved in the enforcement of all laws, and especially the common law relative to common carriers; and that railroad property would be taxed on the same basis, with reference to its actual value, as other property is taxed. In these matters, as well as in many others, the just expectations of railway companies have not been realized.

At the beginning of the last quarter of a century there were in the United States 53,400 miles of railroad, or one mile for each 722 inhabitants, and the rates for railway transportation were less than such rates were then, or at any time since have been, in any other country in the world.

With the exception of those in the Eastern and Middle States, three-fourths of the railroads in this country were then earning no more, and many of them less, than their fixed charges. Under such conditions the people demanded still lower rates, and a law was enacted by the Legislature of Illinois, approved May 2, 1873, and similar laws have long been in force in other States, which practically empower railroad commissioners to limit railway rates at their discretion.

An eminent writer upon the subject of railway management, in an article published in the *North American Review*, in its April number, 1875, referring to this law, asserts that "the Illinois railroad law was ingeniously framed so as to make those who were to use the railroads of Illinois the final arbiters as to what it was reasonable they should pay for such use." More than twenty years' experience under the law has proved the truth of the assertion.

This law practically affords absolute protection against charges in excess of those declared reasonable by railway commissioners, who are appointed by the people to guard and protect their interests. But with reasonable rates the people apparently are not satisfied, and they have long acted upon a plan by which railway rates are reduced below such as are declared reasonable by railway commissioners. This plan reduces the price of railway transportation by increasing its cost. It is based upon contracts made by the State with persons who build railroads for the purpose of making a profit for themselves while the roads are being constructed.

After the State has caused the construction of as many railroads as can be operated with economy, it contracts with such persons as we have referred to for such number of competing roads as will, by the subdivision of traffic and by the orders of its railroad commissioners, force, at least, a part of them to bankruptcy. With bankruptcy staring it in the face, a railroad company does what business men generally do under similar circumstances. Ever hopeful, until the sheriff appears, that failure may be avoided, or, at least, postponed, it borrows money until its credit is exhausted, and sells trans-

portation at any sacrifice to obtain money to meet its maturing obligations; and by reason of the law which prohibits agreements with its competitors, by which expenses might be reduced, its progress to bankruptcy is accelerated. When bankruptcy can no longer be postponed, the road passes into the hands of a receiver, who operates it until those at whose expense it was constructed can be induced to contribute such amount of money as is needed to effect a reorganization, pay the floating debt, and start it again on its downward way to bankruptcy. And thus its history is repeated.

That which we have above outlined has been the experience during the last twenty-five years of more than three-fourths of the railroad companies of the country, and, as to many of them, it has been several times repeated.

When a railroad company is struggling to avoid bankruptcy, its more fortunate competitors are compelled to make rates ruinously low to retain their traffic, and, therefore, the plan of the people for obtaining cheap transportation on all railroads is successful. The people, apparently, forgetting their contracts, attempt to justify such action by saying that their object is commercial competition; but there can be no commercial competition in the absence of the right to sell what the competitor has to offer at what it is worth in the market, or in the absence of the right to decline to sell when the market price is not satisfactory. Commercial competition does exist among carriers on the oceans, lakes, and rivers, although many of them are incorporated under State charters. They are permitted to sell transportation or to decline to sell it at their pleasure, and are not restricted as to their charges. There are good reasons why such freedom of action cannot be permitted on railways, but such reasons render commercial competition among them impossible. The result is not competition in the common acceptation of that term; it is strife which causes evils without number, and the confiscation of railway property.

The railroad problem, of which so much is said, is what the people have made it, and it is not surprising that the

people find much in it that they would prefer to have the world believe is not the result of their own acts.

In pursuing its railway policy the State, apparently, has not considered whether it is consistent with its honor, after having contracted for the construction of railroads and authorized the issue and sale of securities based thereon, to subsequently take such action as it has taken, thereby destroying the value of such securities without compensating the persons who, relying upon its good faith, have purchased them. If the State decides that the public interest requires it to destroy such rights as it has granted by contract, or to take or destroy private property of any kind, we presume no one will deny its right to do so by the exercise of its power of eminent domain, and the payment of damages, judiciously ascertained; but the destruction of private rights or property, without payment therefor, is manifestly wrong.

There is a very numerous class of persons, especially in the Western States, who profit greatly by reason of railroad poverty, and the railroad policy of the people for many years has been, in a great degree, shaped and promoted by them. Such persons obtain advantages over their more conscientious competitors in trade, by inducing impecunious railroad companies to secretly reduce railway rates in consideration of their patronage, and they have long since learned that, when the company yields to their solicitation, it is ever poverty, and not the will, that consents. In the nature of such cases, lawful rates would be insisted upon if the pressure of need were not too strong to be resisted.

By reason of the course the people have pursued, there are four or five times as many competing railroads as are needed, and only about one-fourth, consisting of those most advantageously located, and such as have superior facilities, have for the last twenty-five years been able to earn dividends. The remaining three-fourths of the railroads, for the greater part of that period, have earned less than their fixed charges; and although hundreds of them have been sold in bankruptcy, reorganized and repaired, very few, if any of them, have there-

after earned any return whatever for those who have contributed the cost thereof. Such contributions, aggregating many millions of dollars, have been made with the hope that with an increased development of the country, and the consequent increase of traffic, the people would permit increased net earnings, by which, at least, a part of the cost of the roads might be saved; but although the expected development of the country and the increased amount of traffic have been realized, the States have continued to contract for railways to subdivide the traffic, and railway commissioners have continued to reduce railway rates to such extent, that in many parts of the country the net earnings per mile of railways are less than such earnings were twenty-five years ago. It, therefore, appears in nearly all cases, that the money contributed in the hope of saving such properties, has been, in effect, contributed to enable the people to continue to enforce railway service at less than its actual cost.

It is difficult to ascertain precisely what the total reduction of railway rates during the last twenty-five years has been, but, approximately, in the Western States the average of passenger rates was at least 50 per cent., and the average of freight rates at least 100 per cent. higher in 1870 than in 1895. In view of the fact that at all times during that period the average of operating expenses has been equal to from 65 to 75 per cent. of the rates charged, it is easy to see that such reduction of rates has, in the case of most roads, naturally led to bankruptcy. It is, however, but just to say that, so far as we are advised, when railway commissioners have ordered rates reduced they have acted in accordance with the imperative wishes of those by whom they are employed. Under such conditions the railway mileage of the country has been increased during the last quarter of a century 237 per cent., while during the same period the population of the country has increased, approximately, 78 per cent.; and still in many States there is a standing invitation to contract for the construction of railroads under laws that require no inquiry as to the use that can be made of them when completed, or at any time thereafter.

It is interesting to contrast the railway policy of this country with that of other countries. On page 20 of this report may be found in a tabular statement, compiled from consular and other official reports, in which is shown the total railway mileage, the number of miles of railway for each 100 square miles of territory, the number of inhabitants for each mile of railway in eight of the principal European countries, in the United States as a whole, and in each of the forty-four States in the Union, which presents interesting comparisons. For example, comparing Great Britain and Ireland with Illinois, we find that the former, for each mile of railway, has nearly 12 per cent. more territory and five times as many inhabitants as the latter.

STATEMENT OF RAILWAY MILEAGE IN THE PRINCIPAL EUROPEAN COUNTRIES AND IN THE UNITED STATES.

Compiled from consular and other official reports published in 1895:

COUNTRIES.	Total Miles of Railroad.	Miles of Railroad per 100 Square Miles of Territory.	Inhabit- ants per Mile of Railr'd.
Russia	19,622	0.936	4,878
Italy	8,496	7.678	3,650
Spain	6,769	3.486	2,544
Austria-Hungary	17,621	7.313	2,254
Great Britain and Ireland	20,321	16.778	1,938
Germany	27,451	13.084	1,835
Belgium	3,379	29.710	1,835
France	24,014	11.229	1,438
United States	178,708	6.020	380
Rhode Island	226	20.840	1,650
Massachusetts	2,118	26.350	1,140
Maryland	1,291	13.090	872
New York	8,002	16.950	803
Connecticut	1,013	20.910	795
New Jersey	2,155	28.910	723
Kentucky	3,021	7.550	664
Tennessee	3,065	7.340	622
Pennsylvania	9,563	21.330	592
Louisiana	2,050	4.520	589

COUNTRIES.	Total Miles of Railroad.	Miles of Railroad per 100 Square Miles of Territory.	Inhabit- ants per Mile of Railr'd.
Delaware	318	16.210	573
Mississippi	2,478	5.250	562
North Carolina	3,432	7.070	509
Virginia	3,564	8.880	502
South Carolina	2,584	8.570	480
Maine	1,510	5.050	472
Ohio	8,547	20.970	464
Missouri	6,463	9.460	445
Alabama	3,708	7.200	440
West Virginia	1,936	7.850	421
Illinois	10,430	18.680	395
Georgia	5,102	8.650	388
Indiana	6,326	17.620	374
Vermont	988	10.810	363
New Hampshire	1,191	13.230	341
Wisconsin	6,022	11.060	302
Michigan	7,633	13.290	296
California	4,861	3.120	269
Arkansas	2,467	4.650	268
Texas	9,264	3.530	261
Iowa	8,477	15.280	243
Minnesota	6,009	7.590	234
Oregon	1,529	1.620	221
Nebraska	5,540	7.210	206
Kansas	8,841	10.820	174
Florida	2,927	5.400	144
Washington	2,811	4.200	134
South Dakota	2,799	3.640	126
Colorado	4,530	4.370	98
Idaho	1,088	1.290	83
North Dakota	2,516	3.580	77
Wyoming	1,160	1.190	56
Nevada	925	0.840	53
Montana	2,735	1.880	52

Comparing Great Britain and Ireland, Belgium, France, Germany, Russia, Austria-Hungary, Italy, and Spain with the United States, we find that in the European countries named there is an average of 2,617, and in the United States only 380 inhabitants for each mile of railroad. In the European countries last named the total railway mileage re-

ported is 127,673 miles, or about 71 per cent. of that of the United States, and the total population is about 335,000,000.

The average rates for railway transportation in Europe are from 50 to 100 per cent. higher, and the wages of railway employes, on which the cost of railway transportation largely depends, are only about one-half of those paid in this country.

In the matter of governmental control of railway rates—for example, in France, where six of the seven railway systems are operated by corporations chartered by the State—the State reserves the right to limit the charges for transportation, but it guarantees the payment of the interest on the indebtedness of the corporations, and also a specified rate of dividends on the railway shares. If the net earnings of the road are not sufficient for such payments, the deficit is paid from the national treasury. That the right of a government to reduce railway rates involves the duty to protect railway companies from loss by reason of such reduction in that or in some other way, is recognized in all European countries. The course pursued by the State of Illinois, relative to the construction, operation, and taxation of railways, may be considered a fair type of that pursued in all States in which railroads have been constructed with little or no cost to such States or their inhabitants.

In 1837 the State of Illinois undertook the construction of about 1,300 miles of railroad. It expended about \$15,000,000, exhausted its credit, and failed to complete any part of the proposed railways. For about ten years the State, with a population of less than 500,000, was unable to pay the interest on its debt, and very little progress was made in its development. It then appealed to persons in the older States, and made such contracts with them as we have referred to, under which such railroads as were needed were constructed, without expense to the State or its inhabitants. The benefits the people of Illinois have realized by the use of the railroads then constructed are beyond the power of computation. How unjustly the State has dealt with those who manifested

their faith in its honor in the days of its adversity, is shown by its subsequent railway history.

The laws of Illinois provide for the construction of railroads upon and across streets and common highways, subject to certain conditions, but do not provide that a railroad company, after it has constructed its railroad in accordance with such conditions, may thereafter be required to reconstruct it upon a different grade. If, by reason of increased travel on streets, or the establishment of new streets after the completion of a railroad, it becomes necessary to separate the grade of the railroad tracks and the grade of the streets, it seems equitable that the cost thereof be divided between the people and the railroad companies, so that each shall pay in proportion to the benefits it is to derive from the expenditure. In many States a division of cost in such cases is required by statute, and, although there is no such statute in Illinois, the equity of dividing the cost, as, for example, in the construction of viaducts in Chicago, has, for many years, until recently, been recognized and acted upon. Recently, public sentiment has changed, and now the city of Chicago demands that railway companies shall elevate their tracks so that the streets of the city may pass under them, and that the total cost thereof shall be paid by the railroad companies. The city declares that, if necessary, it will compel a compliance with its demands by coercive measures which will impose burdens upon railroad companies more than equal to the interest on the cost of elevating the tracks.

All property in Illinois, except railroads, was assessed for taxation in 1877 at a valuation of \$892,380,972, and in 1895 at a valuation of \$753,869,082—decrease in valuation in nineteen years \$138,511,890, or about 15½ per cent. With the exception of railways, the actual increase in value of all kinds of property in the State during that period has been very great. The railroad property of the State was assessed at a valuation of \$37,141,180 in 1877, and at a valuation of \$79,231,164 in 1895. The increased railway mileage during that period is 47 per cent.; the increased net earnings a fraction

less than 40 per cent.; and while, as before stated, the assessment of all other property in the State has been reduced 15½ per cent., the assessment of railroad property has been increased 113.56 per cent. We are unable to state the total amount of taxes paid by railroad companies in Illinois in 1895, but the amount paid in 1894 is \$3,846,378.87, which is equal to 77.43 per cent. of the total amount of dividends earned in that State by all railroad companies operating railroads therein.

The twenty-fourth annual report of the railroad commissioners of Illinois, the last published, is for the year ending June 30, 1894. From it we derive the following facts: Excluding railroad companies having less than 3 per cent. of their mileage in Illinois, the report shows that nine companies operating railroads therein paid dividends, the total amount of which is equal to an average of 4.92 per cent. on their shares. The report states that thirty-six companies operating railroads in the State failed to earn as much as their fixed charges, and that the total deficit of such companies is \$6,687,875. The report does not state the total amount of dividends earned in Illinois, but by dividing the amount paid by the nine companies referred to in proportion to their mileage in the States in which the roads are operated, it appears that their earnings in Illinois, applicable to dividends, amounted to \$4,967,615. It would, therefore, appear that the railroads of Illinois, considered as a whole, earned \$1,720,260 less than their total fixed charges; but the total deficit is evidently much greater, for it appears that the debit balances of the thirty-six companies referred to were increased \$12,978,355, and if we take into account the depreciation in the physical condition of the roads, which is not reported, but which always takes place under such circumstances, it is safe to say that the actual total deficit of the Illinois railroads in that year was at least \$20,000,000.

The report embraces the last four months of the period in which the Columbian Exposition was held at Chicago. It shows that 83,281,655 passengers were transported in Illi-

nois by the railroads during the year; that the average distance traveled in the State by each passenger was 26.84 miles, and the average fare paid for that distance was 8.24 cents less than the average cost of the carriage. The total loss by passenger traffic on the railroads in Illinois in that year amounts, in round numbers, to \$5,000,000.

By the transportation of freight of all kinds the report shows an average gain of less than 3 mills per ton per mile, but the general result of the year's traffic was a loss of, approximately, \$20,000,000, as before stated.

Notwithstanding the official report of the commissioners shows that the railroads of Illinois, considered as a whole, were serving their patrons at rates which were less than the actual cost of the service, the publication of the report was soon followed by an order of the Commission requiring all of the railroad companies in the State to reduce their rates for transporting freight, in conformity with a new schedule and classification which has been in force since the first day of July, last. The order does not require passenger rates to be reduced.

Orders by railway commissioners requiring a reduction of railway rates, under such circumstances as are above referred to, speak for themselves; but they are apparently consistent with the general policy of popular control of railway affairs, as it is manifested by the imposition of excessive taxes and other burdens upon railways, the authorization of excessive railway construction, and by other means employed for reducing railway rates.

A fraction of a cent in railway rates is, comparatively, of little consequence to each railway patron, but with the railroad company it is multiplied many times, and it measures the difference between a reasonable profit and the ability to render good service on the one hand, and loss and inability to render such service on the other.

If the time shall come when every railroad company in this country shall have reason to feel that it is justly treated, and that it is possible for it, by lawful service, to ward off im-

pending bankruptcy, the temptation to unjustly discriminate by secret rates and other unlawful practices will be mainly removed, and we may expect a rivalry among railroads prompted by their own interest in which each will strive to outdo the other in safely and promptly transporting persons and property, and in the excellence of their accommodations and service. But for such rivalry a just and reasonable support is an indispensable prerequisite.

The experience of the last quarter of a century has demonstrated that the power of the people over railway property is practically without restraint, and, necessarily, they look upon railway matters through the medium of self-interest. Whatever may be said of their intentions, the result of popular control of railways has long been, in most cases, either total or partial confiscation.

It is difficult for us to understand why the rights of those at whose expense railroads are constructed are not as justly entitled to protection by State and Federal laws as the rights of those who use them; but, apparently the people are as confident that they have the right to demand and enforce railway service upon such terms as may be in accordance with their will and pleasure as ever men were of their right to demand and enforce services on like terms from persons who were subject to their power.

Unless popular sentiment in this country shall so change as to practically recognize the principle—as it is recognized in other countries—that railway control by the State in the interest of the people involves the duty of the State to protect the just rights of those at whose expense railways are constructed and operated, we see no reason why we may not expect the railroad history of the last quarter of a century to repeat itself.

II.*

In our last annual report we called your attention to the excessive taxation of railroad property in the West, and to

* Being an extract from the thirty-fourth annual report to the stockholders of the Chicago & Alton railroad for the year ending December, 1896.

statistics which show that while the assessment of railroad property has for many years been increased, the assessment of all other property has been reduced.

Your railroad was extended to Kansas City in 1879, and the number of miles of railroad upon which your company has paid taxes has remained unchanged for the last seventeen years.

In this connection we beg to call your attention to a tabular statement (given below on this page) which shows the gross and the net earnings of your railroad; the amount of taxes paid by your company and the ratio of taxes to net earnings in each of the years 1880 to 1896 inclusive. It will be seen that as the net earnings have decreased and taxes have increased, the taxes amounting to \$147,413.53 in 1880 and \$315,745.48 in 1896, the percentage of taxes to net earnings having increased from 4.24 per cent. in 1880 to 11.27 per cent. in 1896.

In considering these facts, it should be kept in mind that your company has not added to its railway mileage since 1879, or, in other words, that the taxes have each year been assessed upon the same property.

CHICAGO & ALTON RAILROAD.

Statement of Gross Earnings, Net Earnings, Amount of Taxes
Paid and the Ratio of Taxes to Net Earnings in
Each Year from 1880 to 1896.

Year.	Gross.	Net.	Taxes.	Pr. Ct.
1880.....	\$7,687,225.98	\$3,477,984.71	\$147,413.53	4.24
1881.....	7,557,740.42	3,236,365.42	171,661.07	5.30
1882.....	8,215,495.12	3,530,991.62	198,621.97	5.59
1883.....	8,810,610.38	3,713,577.76	217,074.30	5.84
1884.....	8,709,274.22	3,575,484.06	198,122.16	5.54
1885.....	7,993,169.33	3,380,321.93	236,938.37	7.03
1886.....	8,060,639.34	3,409,684.16	255,412.17	7.51
1887.....	8,941,386.31	3,671,183.47	251,857.58	6.86
1888.....	7,511,465.19	2,843,380.74	262,170.54	9.22
1889.....	7,516,616.44	2,944,880.45	266,101.54	9.03
1890.....	7,065,753.15	2,683,751.60	246,750.97	9.16
1891.....	7,590,881.18	3,132,131.38	253,804.86	8.10

RAILWAYS AND THE PUBLIC—BLACKSTONE. 135

Year.	Gross.	Net.	Taxes.	Pr. Ct.
1892.....	\$7,730,610.53	\$2,922,811.82	\$269,211.15	9.21
1893.....	7,566,640.21	2,910,751.06	265,158.12	9.10
1894.....	6,292,236.54	2,663,549.34	279,868.95	10.50
1895.....	6,802,486.04	2,819,493.35	286,845.51	10.17
1896.....	6,840,283.85	2,801,736.93	315,745.48	11.27

Railways and Their Revenue.

BY C. P. HUNTINGTON.

I*

The Interstate Commerce Commission, in an advance copy of their report for the year ending June 30, 1894, presents by groups some interesting tables and diagrams in respect to average receipts per passenger and per ton per mile and density of traffic. As the lines of the Pacific System of this company are situated entirely in group X in the geographical division observed by the Interstate Commerce Commission in said report, attention is called to the following comparison of the average receipts per ton per mile between the lines of the Pacific System, which form 38.80 per cent. of the total mileage in said group.

	Per ton per mile.	Per passen- ger per mile.
Average receipts, Group X, Interstate Commerce Commission report, 1894.....	1.343 cents.	2.046 cents.
Average receipts, Pacific System lines, for the year 1894.....	1.316 "	1.894 "
Average receipts, Pacific System lines, for the year 1895.....	1.260 "	1.965 "

The density of traffic is an important factor in the earnings of the railroads, and the conditions under which they could charge lower rates without lessening to the public the excellent service which they are now giving it, and depriving those who aided in the development of the country by contributing their money for the building of railroads of a fair return upon their investment, are mainly dependent upon the increased traffic from increased development of the country. From the following statement, comparing the density of traffic and the average rates received by the railroads in group I, comprising the New England States, with those of group X

* From the "general remarks" appended to the eleventh annual report of the Southern Pacific Company, for the year ending December, 1895.

and the Pacific System lines of this company, it will be evident that the rates received by the railroads in group X, including the Pacific System, are much too low in proportion to the amount of business for them, and the much higher prices which they have to pay for fuel, wages and all material entering into the operations of their railroads:

	Group I.	Group X.	Pacific System.
Average receipts per ton per mile.....	1.243 cents.	1.343 cents.	1.316 cents.
Ton miles per mile of road.....	409,785 tons.	206,245 tons.	274,664 tons.
Average receipts per passenger per mile..	1.854 cents.	2.046 cents.	1.894 cents.
Passenger miles per mile of road.....	248,670 miles.	64,690 miles.	79,355 miles.

The advance in rates of a fraction of a cent is, comparatively, of but little amount to each person using the railroads, but when multiplied by the large tonnage and travel over them it represents on the one hand properties well maintained and giving excellent service to the public, with a fair return upon the capital expended to create the properties, and, on the other hand, a resort to the courts for relief, such as has often been the case, and particularly since 1893, of a considerable part of the railroad properties in this country.

The loss in revenue from the decrease in rates, and gain in revenue from the increase in tonnage, on the lines of the Pacific System, beginning with 1872 and closing with 1895, the fluctuations in tonnage and rates, which began with 3.657 cents per ton per mile in 1872, and ended with 1.260 cents in 1895, are graphically set forth in a diagram accompanying the controller's report. This, and another diagram showing for the last 24 years the average receipts per ton per mile, the density of tonnage, and the earnings over operating expenses per mile of road, furnish interesting data on the subject of railroad traffic and rates on the Pacific Coast. These diagrams show the large decrease in the average rates of transportation which has taken place on these lines, and differing from the experience of the railroads in the more thickly settled States, where the tonnage increased sufficiently to equal, at least, in earnings, the loss from decrease in rates; in this, that the loss in earnings on the Pacific System from decrease in rates has been more than twice the amount of the gain in earnings from an increase in tonnage. Although rates have steadily declined,

the expenses attending the movement of the increased business. increase in wages, improvements in cars, locomotives, and all other appliances for the prompt and safe movement of passengers and freight, have steadily increased the expenses of operation, so that the earnings over operating expenses per mile of road operated have decreased from \$5,763.97 in 1872 to \$2,296.62 in 1895.

The unsatisfactory condition into which the railroads of the country have been forced by the various means employed for effecting reductions in rates is now being recognized by the public. The feeling, almost an epidemic, passing from State to State, under whose influence people have fixed, or endeavored to fix, the rates of fares and freights which they should themselves pay for the service given, and the benefits derived by those who use the railroads, without regard to the rights of those who create or own the properties, is disappearing. A better appreciation of the mutuality of interest between the public and the railroads, and a higher sense of justice have been reached in most of the States, and it is reasonable to assume that a similar state of public mind will soon obtain in the few States in which attacks are still being made against corporate property, and, more particularly, railroads.

II*

In an able article recently published in the *North American Review* on the subject of railroad transportation and legislation, the reductions in freight rates on thirteen of the important railways, performing about one-third of the entire freight transportation of this country, were shown to have averaged about 15 per cent. between 1885 and 1896.

The reduction in rates on these properties between the years 1885 and 1896 have been much greater, as will be seen from the following statement of earnings, volume of traffic and rates received:

* An extract from the "general remarks" appended to the twelfth annual report of the Southern Pacific Company, for the year ending December, 1896.

	Total.		Per Mile of Road Operated.				
	1885.	1896.	1885.	1896.	In-crease.	De-crease.	Per Cent
Miles of road	4,697.53	6,743.04					
<i>Pass. Traffic.</i>							
Gross earnings ..	\$8,013,373.54	\$11,550,496.16	\$1,705.87	\$1,712.95	\$ 7.08	.....	.42
Pass. carried	9,525,985	20,019,060	2,028	2,969	941	.....	46.40
Pass. carried one mile	318,088,758	575,109,634	67,714	85,289	17,575	.....	25.95
Average receipts per passenger per mile			Cts 2.5192	Cts 2.0083	.....	Cts .5109	20.28
<i>Freight Traffic.</i>							
Gross earnings ..	\$17,217,392.34	\$25,985,612.88	\$3,665.20	\$3,853.69	\$188.49	.....	5.14
Tons commercial freight carried.	3,765,192	8,038,076	802	1,192	390	.....	48.63
Tons freight carried one mile ..	868,409,660	2,351,182,402	184,865	348,683	163,818	.....	88.62
Average receipts per ton per mile			Cts 1.9819	Cts 1.1052	.....	Cts .8767	44.23

The above results show that the reductions have amounted to 20.28 per cent. in passenger rates and 44.23 per cent. in freight rates. Stated in another way, these properties have, in 1896, as compared with 1885, given to the public 25.95 per cent. more passenger service with an increase in gross earnings of less than one-half of 1 per cent., and 88.62 per cent. more freight service, with an increase in gross earnings of a fraction only over 5 per cent.

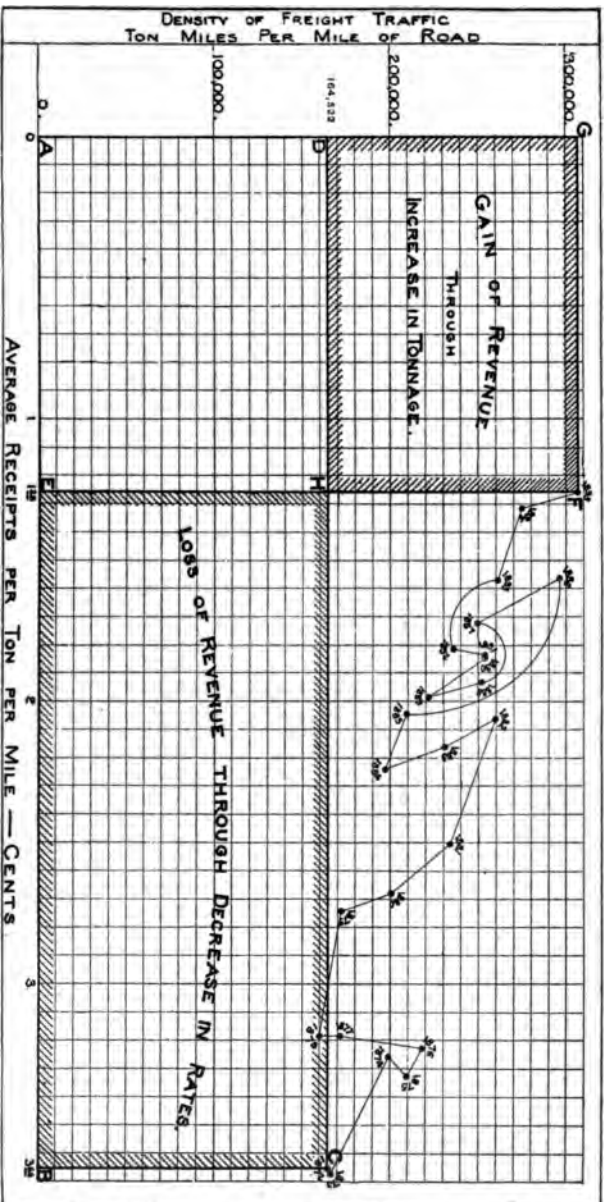
These reductions in rates are exceptionally large for so short a period, but some part thereof has resulted from the unification in operation of a number of smaller lines by which the service to the public was improved and the expenses of operations lessened. The sums involved in these reductions amount to many millions. Had the companies received in 1896 the rates which they received five years ago, the earnings for 1896 would have been greater by \$14,074,825.98, and at the rates received in 1885 by \$26,578,809.43 greater. If we apply the rates received in 1885 to the traffic of the subsequent years, including 1896, the reduction to the public not interested in railroad securities and the loss to the large public that invests in such securities, or depends upon the railroads for employment, directly or indirectly, has for the eleven years amounted to \$79,992,614.82 on the Pacific System lines, and to \$50,125,-

884.79 on the lines of the Atlantic properties, a total of \$130,118,499.61. There are probably no other railroad properties in this country, and I doubt if elsewhere, where the reduction in expenses resulting from unification in their general operation of a number of lines, economy in working expenses, and expenditures for improvements, by which expenses may be still further lessened, have contributed to the public so large a sum in so short a period as on these properties. The amount of the reduction on the Pacific System lines is exceptionally large, considering the much higher prices than other lines which they have to pay for fuel, wages and all material entering into operation of their railroads.

Diagrams Nos. 1 and 2 in the report of the controller show the freight rates in density of tonnage on the Pacific System lines and on the lines of the Atlantic properties from 1885 to 1896. These diagrams show the large reduction in freight rates which have taken place since 1885, and the loss in gross revenue resulting therefrom, as well as the gain in gross revenue from the increase in tonnage. The important bearing of density of traffic on the earnings of the railroads referred to in the last annual report and on the determination of reasonable rates is graphically set forth in these diagrams.

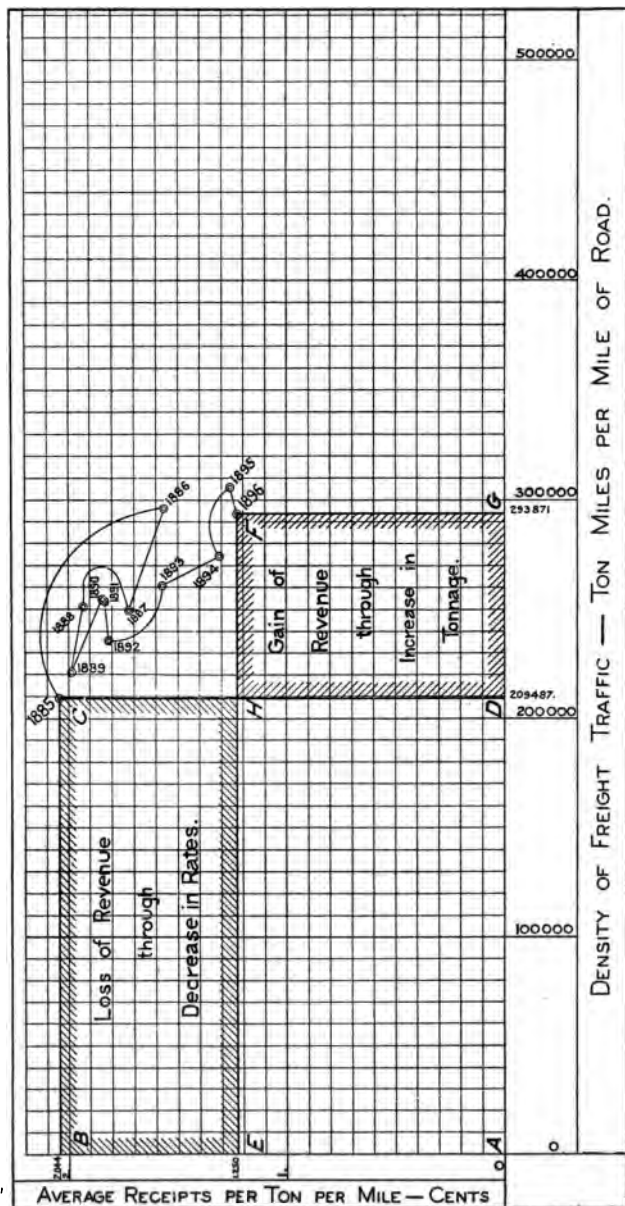
The disastrous effects of the reductions in rates, to which all the railroads in this country have been subjected more or less, have been evidenced in the large number of roads which were compelled to seek relief in the courts since 1893. The shrinkage of capital and the lessened returns upon the capital, which followed each reorganization, the large reduction in the number of employes on the railroads, and in the amount of supplies purchased, imposed by the diminished earnings of railroads, have demonstrated to the public how essential a factor the prosperity of the railroads is in the general prosperity of the country. The change in public opinion toward the acceptance of this fact, referred to in the last annual report, has been manifested in a greater sense of justice shown toward corporate rights, on the part of legislatures and railroad commissions in states which had formerly

DIAGRAM NO. I.



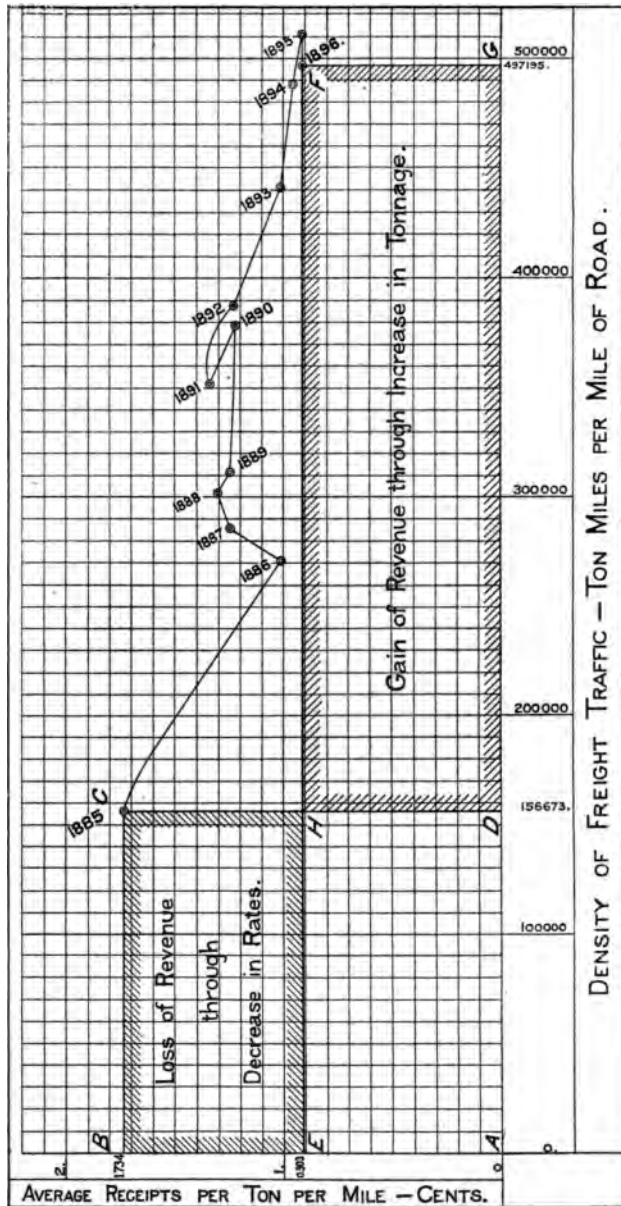
1. The line A, B represents the average receipts per ton per mile, each vertical line representing one mill. The line A, C represents the density of traffic, i. e., ton miles per annum per mile of road operated, each horizontal line representing 10,000 ton miles.
2. Horizontal and vertical lines drawn through any year-point show the rate per ton per mile and density of traffic respectively for that year, and the areas included between said lines and the two reference lines A, B and A, C the freight earnings per mile of road operated.
3. To facilitate comparisons between the years 1872 and 1895, the lines have been drawn for those years on the diagram. Thus earnings per mile of road for the year 1872 are shown by A, B, C, D, and those for 1895 by A, E, F, G.
4. C, H shows the reduction of rate from 1872 to 1895. H, F shows the increase in density of traffic per mile of road from 1872 to 1895.
5. The shrinkage in freight earnings per mile of road through fall in rates (density of traffic remaining the same) is shown by the comparison of the areas A, B, C, D, representing the earnings per mile of road in 1872 on the tonnage of that year (104,532 ton miles per mile of road), at the rate of 3.66 cents per ton per mile, with the area of A, E, H, D representing what the earnings per mile of road would have been in 1872 if the tonnage of that year had been moved at the rates received in 1895.

DIAGRAM NO. II.



- SOUTHERN PACIFIC LINES.—PACIFIC SYSTEM.—TONNAGE AND RATES PER TON MILE, 1885 TO 1896.
1. The line A, B represents the average receipts per ton per mile, each vertical line representing one mill. The line A, G represents the density of traffic, i. e., ton miles per annum per mile of road operated, each horizontal line representing 10,000 ton miles.
 2. Horizontal and vertical lines drawn through any year-point show the rate per ton per mile and density of traffic respectively for that year, and the areas included between said lines and the two reference lines A, B and A, G the freight earnings per mile of road operated.
 3. To facilitate comparisons between the years 1885 and 1896, the lines have been drawn for those years on the diagram. Thus earnings per mile of road for the year 1885 are shown by A, B, C, D, and those for 1896 by A, E, F, G.
 4. C, H shows the reduction of rate from 1885 to 1896. H, F shows the increase in density of traffic per mile of road from 1885 to 1896.
 5. The shrinkage in freight earnings per mile of road through fall of rates (density of traffic remaining the same) is shown by the comparison of the area A, B, C, D, representing the earnings per mile of road in 1885, on the tonnage of that year (209,487 ton miles per mile of road), at the rate of 2.04 cents per ton per mile, with the area of A, E, H, D representing what the earnings per mile of road would have been in 1885 if the tonnage of that year had been moved at the rates received in 1896.

DIAGRAM NO. III.



SOUTHERN PACIFIC LINES.—ATLANTIC SYSTEM.—TONNAGE AND RATES PER TON MILE, 1885 TO 1896.

1. The line A, B represents the average receipts per ton per mile, each vertical line representing one mill. The line A, G represents the density of traffic, i. e., ton miles per annum per mile of road operated, each horizontal line representing 10,000 ton miles.
2. Horizontal and vertical lines drawn through any year-point show the rate per ton per mile and density of traffic respectively for that year, and the areas included between said lines and the two reference lines A, B and A, G the freight earnings per mile of road operated.
3. To facilitate comparisons between the years 1885 and 1896, the lines have been drawn for those years on the diagram. Thus earnings per mile of road for the year 1885 are shown by A, B, C, D, and those for 1896 by A, E, F, G.
4. C, H shows the reduction of rate from 1885 to 1896. H, F shows the increase in density of traffic per mile of road from 1885 to 1896.
5. The shrinkage in freight earnings per mile of road through fall in rates (density of traffic remaining the same) is shown by the comparison of the area A, B, C, D, representing the earnings per mile of road in 1885 on the tonnage of that year (156,673 ton miles per mile of road), at the rate of 1.734 cents per ton per mile, with the area of A, E, H, D representing what the earnings per mile of road would have been in 1885 if the tonnage of that year had been moved at the rates received in 1896.

been extreme in their attacks upon vested rights. The mutual-ity of interests between communities and the railroads, and the many difficulties which enter into the question of transportation, are becoming better understood by those intrusted with the supervision over those matters. The railroad commissions appreciate the desire of the railroads to deal justly with all interests, and in their annual reports refer to the very small number of actual violations of the law, and the alacrity with which the railroads have remedied complaints brought against them, which, as they state, have almost invariably arisen from an innocent mistake of facts and were unintentionally committed. These changes all point to a marked improvement in the minds of the public toward the transportation interests of this country.

The trend of public opinion is unmistakably in favor of uniform and reasonable rates, such as will enable the railroads to keep their properties in good condition, improve and add to their facilities for the public service, and leave a reasonable profit on the capital invested, in creating and maintaining these facilities. The limit of the downward tendency of rates has evidently been reached, if the owners of the railroads and their managers can agree upon the maintenance of reasonable rates just and equitable to all. To what extent the owners and managers will agree upon such a course or maintain any agreements made between themselves in respect thereto, remains to be seen. In view of the recent decision of the Supreme Court in the Trans-Missouri Freight Association case, the wish is earnestly expressed that the costly experience of the owners of railroads of the last thirty years will have shown to them some way by which a repetition of their disastrous experiences will be prevented. Means can certainly be found for operating the railroads of this country, representing one-fifth of its entire wealth, so as to give some returns to those who have invested their money in them without its being illegal or unconstitutional. However bad the laws may be, they have, I believe, never damaged the railroad properties of this country as much as did the people who owned them, by their

want of faith in each other, and disregard of the engagements with each other, no matter how sacred their character may have been.

The experience of the majority of those who have had the management of railroad properties for a considerable number of years seems to be in favor of a modification of the Interstate Commerce Law, under which traffic agreements between railroads, sanctioned by that commission, can be made enforceable between them, and all prohibitions and penalties prescribed for carriers shall be made applicable to their customers and patrons. A large majority of the shipping interests of the country also recognize the necessity of some such modification in order to secure uniform rates and prevent unjust discrimination. Some action will probably be taken by Congress in the matter, and, if the owners of railroads cannot among themselves maintain uniform and reasonable rates, suggested modification will probably be the next best step for the preservation of their properties. Whatever amendments may be presented in regard to this matter should, in justice to the railroads, include provision against unjust discriminations by railroads in the hands of receivers, and the law should also be amended to afford protection to the railroads as well as the shippers. A restriction should be placed upon the license to build new roads where the building of such lines is without any proportionate benefit to the public. The extent to which the general prosperity of the country has been harmed by the unlicensed and indiscriminate construction of new lines has been recognized by the railroad commissioners of the State of New York, and in several of the other States, and they have declined to sanction the construction of new roads where the building of such will do more harm to vested interests than benefit to the public. This provision for the protection of existing property and against the waste of new capital, which finally comes out of the public, should be embodied in the laws of the Interstate Commerce Commission, for the equal protection of the interests committed in them. Until something is done in this direction the owners of railroads, or those

who manage them, will have to be more reliable than they have been in the past, and maintain their rates which will be just and reasonable to the public, and leave a fair return to those that have spent their money in creating these properties. If this is not done there is no way of keeping the railroads out of the courts, and that is a condition of affairs, I believe, where everybody loses, that is, the public and the owners of the property, and no one gains excepting the receivers and the courts.

Railways—A Retrospect.*

BY M. E. INGALLS.

Mr. President and Gentlemen:—In speaking to you briefly this evening, I shall not attempt any discussion of technical matters or theories in reference to railways; you know more about such things than I do. I shall endeavor to treat the subject generally, and with the impression that each and all of you, if not now presidents or general managers, hope to be at some future day, and therefore are interested in the success of railways. I believe that railways cannot be a success unless they have rates upon their traffic that are remunerative, and I will confine most of my suggestions to the question of how these can be obtained in the future, coupled with some general observations on the past, present and future of railways.

The year 1895 was probably the turning point in the management of railways in this country. They were only a little over half a century old, in fact one of the greatest has just celebrated its semi-centennial, and very few railway corporations were in existence fifty years ago; but in this short time they have grown to immense proportions. No better illustration of this growth can be seen than that of the corporation just alluded to, the Pennsylvania Railroad, one of the greatest companies in the world. Statistics were not so well kept in early days as now, but in 1852 the Pennsylvania reported that it had carried 102,000,000 tons of freight one mile at an average rate of 3.76 cents per ton per mile. For 1895 it reports 8,173,218,403 tons of freight one mile, at the rate of .56 of a cent per ton per mile. Nothing like it in the history and development of the human race has been

* An address delivered before the St. Louis Railway Club.

known. The combination of the iron way with the propelling power of steam has advanced the world more in fifty years than all else that had been discovered in the fifty centuries preceding. It has furnished employment to an immense army of men, most of whom require a peculiar education and training for the business. A million of men (in round numbers) are engaged in this occupation; as many more in the furnishing of supplies and material necessary for the business; and over and beyond it all is the influence which this traffic has upon the life and civilization of the nation. So that a man or woman whose life and condition are not affected by railways must live in some place so out of the way that it is practically beyond the reach of civilization.

The history of the railways in this country shows the progressiveness of the Anglo-Saxon race better perhaps than anything else that history records. Greater than any conquest of a country, greater than any other advance in civilization, has been the progress of the railways in the last fifty years. Originally constructed to aid scattered communities, and, in most cases, to connect navigable waters, they have long since neglected any connection with rivers or canals, and have carried freight in quantities and at rates that even De Witt Clinton, when he built the Erie Canal, never dreamed of. Built at enormous expense, they were allowed at first to charge rates which now seem extravagant, and were given almost unlimited privileges. Fortunes were made by some of the early adventurers, but more were lost. After a little, barnacles grew up, as they always do upon every great business, outside profits were made, and various pretenses were seized upon to organize parasites to fatten out of the business. There was also the contractor and promoter, who built miles and miles of railway, taking the bonds, subsidies, stock, issuing as much as he could sell, selling it at almost any price, and in many cases pocketing fabulous profits and leaving the poor owners of the railway and the communities which it served, at loggerheads and angry with each other. The communities, looking at the large profits made by these con-

tractors and harassed by business depression, turned upon the railways and by means of legislation endeavored to regulate rates and secure reductions. The first and most notable attack was the Granger legislation which was strengthened and made more acute by the panic of 1873. The railway officials themselves, encouraged and spoiled by the great power they had, in many cases were insolent and lawless, and this added to the trouble. The fight as to whether railways were public corporations and could be controlled by legislation lasted for many years and finally culminated in the decisions of the Supreme Court that there were certain limitations which legislation could apply, and, ultimately, the enactment of the Interstate Commerce Law, which endeavored to regulate all the railways in the country which were doing interstate commerce, and there were practically none that did not do some of this. This law was passed in 1887, and I think we may conclude that from that time the question was settled that railways were public corporations and subject to control of the legislative power. Previous to that, rates were raised or reduced without any notice, and it was considered proper to make certain rates to one man secretly, and higher or lower rates to his neighbor. The fact is, however, that such practices were undoubtedly illegal under the common law, and the Interstate Commerce Law really did not much more than put in statute form the unwritten common law of the land. It did, however, fix a penalty to the practice of giving rebates and secret considerations, and made such practices a crime. After the passage of this law it was accepted by the great body of railway managers and for some little time, one year at least, and perhaps two or three, it was obeyed and rates were fairly well maintained. Soon, however, companies in search of business began to resort to their old tricks of securing it, and by various subterfuges evaded the law, and after the decisions in the Counselman and other cases these practices became more bold, and even those lines which desired to obey the law were forced to meet the practices of their competitors or lose their business, and see their companies go into bankruptcy.

Probably a worse state of affairs never existed in reference to a large business interest than that which prevailed among the railways in the early part of 1895, and that is why I stated in the beginning that that year marks the turning point among railways. In June, 1895, some of us met in New York; it was a meeting of the lines between the Mississippi River and the Atlantic Ocean, and north of the Ohio and Potomac. I have never before seen a body of men, managing great enterprises, who were so discouraged over the situation and so hopeless of any future. Rates on grain from the Mississippi River to the ocean were being made at 10 cents per hundredweight; westbound, rates from the seaboard cities at almost any figure that the shipper cared to ask for. A large number of lines were in bankruptcy, and many more which have since gone there were trembling on the brink. There was the most utter want of faith in the promises and assertions of each other; the word or agreement of a railway official was a byword or reproach. A few of us thought it worth while to attempt a reform, and after some effort we succeeded in inducing all to join. It was then agreed by the presidents of the large railways, in the territory I have alluded to, that tariff should be maintained on and after the 12th day of July, and a committee was appointed to devise some new plan for maintaining tariffs in the future. All through the summer and fall many of us worked at this business, and out of it grew what is known as the Joint Traffic Association. Just about as we were starting in this came the decision of the Supreme Court in what is known as the "Brown" case, which practically decided that in the prosecution of parties for giving secret rebates they can be compelled to produce books and tell what they know, so they are not on trial themselves, and this aided in what we were doing, and the result has been that from the 1st of January tariffs have been maintained practically all over the country. Other associations in other districts followed in the lead of this strong one, and in the twenty-five years that I have been managing a railroad I have never known such an adherence to tariff as we have had for

four months. The burden is upon all of us to see that this improvement is made permanent. I take this occasion to make these remarks to you, because, unless this improvement is made permanent the profession is disgraceful, and we want to leave it and seek some other employment. If the railway business of this country should be conducted in the future as it was for (we will say) the two years ending the 30th of June, 1895, we would all lose the respect of ourselves and our fellow citizens and be without any character. These I know are strong words, and harsh ones, but they are true. If, on the other hand, the business can be conducted with strict regard to law, if tariffs can be maintained and agreements enforced, it is a business that will demand the brightest and best minds of the country.

It is undoubtedly true, that the Interstate Commerce Law requires amendments in various ways, but I am quite sure these amendments will be easy to obtain when we have shown that we can maintain the law as it is; but if we are to be a law unto ourselves, and pay no attention to the statute, we cannot hope for any amendments.

This business is so large that it cannot be conducted as ordinary mercantile affairs are. The merchant who sells boots and shoes or clothes, knows something about the price or cost, and he does not sell below cost very long. But in the railway business we employ thousands and thousands of soliciting agents, many of whom have no idea of cost, and who think their business is to secure quantity rather than revenue. They have not, nor has the public been educated up to the fact that giving away of transportation is giving away of money. A man asks you for a pass from St. Louis to Chicago; you think it costs you nothing, and he thinks he is getting what is of value to him, but of no value to you. If you were educated to the point that you were giving away \$15 when you give away a pass to Chicago and return, and he thought he was asking you for that amount of money and receiving it, there would not be so many passes asked for nor so many given. The same is true of reduced

freight rates; when railroad managers and shippers learn that two-thirds of the business at full tariff pays more than a hundred per cent. at half rates, we will have rates maintained better. There has been a great education in this respect, and among railway owners and managers there is a large advancement. Fifteen or twenty years ago a man who had the reputation of being a smart fellow to get business by surreptitious means was in demand. To-day he hunts a long time before he gets a position; and, when he gets one, instead of attempting to make his reputation by having it known that he is cutting rates to secure business, he endeavors to build up a reputation for conservatism. This all shows a gradual education of the community, which in the end will produce beneficial results.

The railway officials of this country must be educated to respect their tariffs, and unless they do there is no future for railways. Tariffs should be made by the directors, and when once made and published they should not be changed except by the same authority. Freight and passenger men should be taught that they are employed to secure business at tariff, and not by reducing it; that they can present the advantages of their lines as to safety, convenience and dispatch, but the published tariffs cannot be varied from. When this is once established, railway operations will be profitable and railway management will be respectable.

One of the strange anomalies of the times, and one which shows how the public conscience is debauched, and has lost its regard for the law, is the fact that there seems to be more trouble to-day in maintaining tariffs and obeying the laws with railways that are in the hands of the court, than with any others. In other words, some of these railways are still, through their receivers, reported to be securing business by secret contracts and illegal rebates. I have no question but that these practices are unknown to the court. One of these days some judge will wake up to this situation, and put an expert upon the accounts of his receiver, and then we will get an example that will be useful. An officer of the court surely should not be a violator of the law.

Those of you who live in this great city of St. Louis, and are engaged in the management of its railways, are particularly interested in the maintenance of tariffs. Under the old plan, a few large business concerns were getting enormous rebates, and were thus able to drive out all competitors; in fact, the entire profits of some large shippers consisted of the illegal rebates which they secretly obtained from the railways. This was more disastrous to your city than to a city like Chicago, which had the advantage of lake transportation as well as of rail. They could always get concessions from the railways to meet the lake rates, and thus were enabled to attract to their city a large commerce, which, if rates had been strictly and impartially maintained, would have come to you. The fact that their commerce was also so much larger than yours, enabled them to sell their business at a greater profit when the railways were secretly offering the lowest freight rate to the best bidder. It will take some little time to adjust business to the new state of affairs, but if the present conditions can obtain for a short time, your shippers and the community generally will be as well satisfied as the railways. Each man will know what he has to pay and will not have to use disreputable means in order to compete with his neighbor.

I have tried to sketch to you briefly the rise and development of railways, and their difficulties. I have so much faith in the ability of the men who are managing them that I have no doubt, in the future, they will avoid the pitfalls of the past. I congratulate you on being connected with a business that has done so much for the world in the past and promises so much for the future.

It is pleasant to dream of what would have been, if railways had not been. How could this great country of ours have been developed? Would this imperial city have been built? Then turn to the other side of the picture and wonder what it will be fifty years from now? Our country is so immense that as it could not have been developed in the past except by railways, so will it be impossible to realize the bright visions of the future that we all have, except by their aid.

Fast time has come to stay and each year the speed of passenger trains between the great cities will be increased, until your "Knickerbocker" out of here at noon, will reach New York the next noon or sooner. The railway carries in its hand great promise to our country in the future. So strive each of you as to make the profession an honorable one; conduct you business so that the community will respect and honor you; above all, "to thine own self be true."

I congratulate you upon the organization of this club. There is nothing like union and association to improve and advance us. I was so much interested in it that I thought it my duty to come here and give what little aid I could to your enterprise by my presence. The social features are of great advantage, but more than all and above all, is the good that comes from conference among yourselves. You rub off the rough edges, you forget the sharp competition, and you learn only of what good you can accomplish by union. There has been a great advance in the operations of railways, in friendly feeling, during the last quarter of a century. It is just a little over twenty-five years since that I remember when the Ohio & Mississippi and the old Indianapolis Cincinnati & Lafayette were competing for business between Cincinnati and St. Louis, and the Ohio & Mississippi bridge was burned, and the then president of the I. C. & L. Ry. hoisted his flag upon the station at Cincinnati in celebration of the event, and compelled the Ohio & Mississippi to submit to his terms before he would take their trains over his line. Such has been the advance that to-day if a bridge should go down upon either of these railways, without reference to the president or general manager, before they even knew of the calamity, the train dispatchers would have arranged to move the trains over the other line without friction or delay. A large part of this advance comes from association, from association in just such clubs as this, and while we may all strive to put our own line ahead and for ourselves first, we must not forget our duties to each other and the general public. Nowhere can they be promoted more than here in this body.

Railway Rates and Earnings in Kansas.

A MEMORIAL TO THE KANSAS LEGISLATURE.

BY E. P. RIPLEY.

To the Members of the Legislature, State of Kansas:—
Having confidence in the intention of your honorable body to conscientiously weigh, and fearlessly and honestly decide the various problems presented for your consideration, the undersigned begs leave to present the following

MEMORIAL OF THE ATCHISON TOPEKA & SANTA FE RAILWAY
COMPANY.

The largest taxpayer and the largest single interest in your State appeals for justice—it wants nothing more. Its interests are indissolubly involved with those of your constituents, it can prosper only as they prosper; its property cannot be removed; it has suffered in the depression of recent years as severely as any interest in the State; it is now struggling to earn for its owners, not an adequate return for the capital invested in it—which is impossible under present conditions—but a small interest on a fraction of its cost.

In earlier and more prosperous times the Atchison Topeka & Santa Fe, like most of its fellow citizens in Kansas, permitted itself to expand too greatly; it built railroads as the citizens built towns—in the belief that they could be sustained. That belief proved to be fallacious, and as a consequence the Atchison Topeka & Santa Fe Company has upon its hands some 2,500 miles of road in Kansas, much of which does not pay operating expenses, and nearly half of which contributes little or nothing to the payment of interest on the company's debt. Yet there is not one of these branches that does not serve many communities, not one so poor that the denizens of its territory could do without it; so we must all stay by Kansas and hope for better times.

But we cannot make times better by preying on each other—we must live and let live, must exercise mutual forbearance and patience, and pull together to retrieve the mistakes of the past.

In the general scaling down of Kansas values the Santa Fe Company has borne its full share; under its recent reorganization the holders of its bonds were obliged to forego more than half their interest charges, and the property is not now earning, and under present conditions cannot be made to earn, anything like a fair return upon its cost or its actual cash value. The same is true of other roads in the State perhaps even to a still greater degree, and I shall venture to make and call your special attention to the following statement, viz.:

There is not a single road in Kansas that earned last year, or will earn this year or can earn, under present conditions, FOUR per cent. either on its cost or what it would cost to duplicate it.

If the foregoing statement be doubted I respectfully invite the Legislature to select experts in whom it may have confidence, to examine and report into the conditions, and I hereby pledge the Atchison Topeka & Santa Fe Company to throw open all its accounts and render all possible facilities for such examination.

In the heat of the recent campaign much was said about railroads, and alleged railroad abuses; many people doubtless believe that discriminations are common, that localities and individuals are built up or pulled down at the will of railroad officers; that secret rebates are paid; that there are "inside rings" and all manner of corruption and favoritism. All these charges have been freely made, and I blame myself and my associates that we have allowed the pressure of current business to prevent us from calling the authors of these statements to public account. That railroad management has always been blameless is not claimed—neither has the management of any other business—but as applied to the present or any conditions that have obtained for the past three years, these statements are all absolutely untrue as regards the Atchison Topeka & Santa Fe, and I believe them to be equally so as to the other roads in the State.

Much has been said about "watered stock," but I respectfully submit that it makes not a particle of difference to any citizen of Kansas whether the stock issue be one thousand or one million dollars per mile, so long as no dividends are earned or paid thereon, and the stockholders of Kansas roads have long been unaccustomed to dividends. Only one road in Kansas has paid dividends in recent years, and it would have paid more if it had no road in Kansas.

Speaking for the Atchison Topeka & Santa Fe Company, I will heartily endorse, cordially support and literally obey the most stringent law that can be devised, forbidding unjust discriminations, but in the name of common justice, as well as in the name of innocent investors who have submitted already to heavy losses, I protest against any reduction of the present scale of charges upon the railroads of the State of Kansas.

It seems to me that you can consistently order such reduction upon only two grounds:

First—That the railroads are making too much money, or

Second—That Kansas rates are higher than in surrounding States, and hence Kansas is bearing an undue share of the cost of supporting its railroads.

As to the first claim, I have already made a statement the truth of which you can easily verify; as to the second, the rates in Kansas are now as low, *considering all the conditions*, as they are in any Western State. The following table showing population of Western States is of the census of 1892, since which time Kansas has certainly not improved its relative standing:

	Sq. Miles.	Population.	Population per Sq. Mi.	R. R. Mileage in States.	Inhab. per Mile of Road.
Missouri	69,415	2,679,184	38.60	6,142	436
Iowa	56,025	1,911,896	34.00	8,416	227
Illinois	56,650	3,826,357	67.54	10,129	377
Kansas	82,080	1,427,096	17.00	8,900	160
Nebraska	77,510	1,056,910	13.66	5,407	195

It will be observed that Kansas has a smaller population

per square mile than any State except Nebraska, and a smaller population per mile of road than even Nebraska. The density of population is in Illinois four times and in Iowa and Missouri twice that of Kansas. Yet the rates charged in Missouri and Iowa are but a trifle less than those of Kansas, while those in Nebraska are substantially the same.

Regular Iowa tariff rates apply only to roads earning \$4,000 per mile or over; roads earning less than \$4,000 and over \$3,000 are permitted to charge 15 per cent., and those earning less than \$3,000, 30 per cent. above these rates. It is believed that there are few roads in Kansas earning \$4,000 per mile, and many that earn less than \$3,000.

Moreover, in all the States with which comparison is here made, the whole State is arable and productive, while fully a third of Kansas contributes practically nothing to the support of its railroads. Yet in Western Iowa to-day corn is worth at least three cents per bushel *less* than it is in Kansas, showing that it is the interstate rate, and not the local State rate which affects the price obtained by the producer.

Again, the roads of Iowa and Missouri haul not only the business of these States, but a large part of the Kansas tonnage crossing these States on its way to market, so that railroad earnings per mile therein are several times as large as in Kansas.

STATEMENT SHOWING AVERAGE FREIGHT RATES ON THE ATCHISON
TOPEKA & SANTA FE RAILWAY FOR THE PAST FIFTEEN YEARS.

Average Rates in Cents per Ton per Mile.

Year ending December 31, 1882.....	2.288
Year ending December 31, 1883.....	1.992
Year ending December 31, 1884.....	1.925
Year ending December 31, 1885.....	1.753
Year ending December 31, 1886.....	1.603
Year ending December 31, 1887.....	1.348
Year ending December 31, 1888.....	1.258
Year ending June 30, 1889.....	1.289
Year ending June 30, 1890.....	1.129
Year ending June 30, 1891.....	1.175

Year ending June 30, 1892.....	1.130
Year ending June 30, 1893.....	1.069
Year ending June 30, 1894.....	1.026
Year ending June 30, 1895.....	1.051
Year ending June 30, 1896.....	1.028

Making a decrease from 1882 to 1896 of 55.07 per cent.

The measures that have been proposed to you for the reduction of our already small revenue are mainly as follows:

First—A maximum freight rate bill.

It is doubtless within the power of the Legislature to pass a bill limiting the charges of railroads, providing always that such act does not result in the taking of private property for public use without adequate compensation. I have already pointed out that any *reduction* of existing rates would have such result.

As to the wisdom or justice of established maximum rates in the State of Kansas, I beg to suggest that conditions vary so widely between Eastern and Western Kansas that it seems to me impracticable. Rates that would be only reasonable in the sparsely settled western counties, would be higher than should be charged in the more prosperous eastern section, and rates which would be fair in the eastern half of the State would be wholly inadequate to support the roads in the western half. There is also a great difference in the roads themselves, and rates upon which one road would starve, might enable another more fortunately situated to exist. Moreover, a maximum rate established by the Legislature is inflexible, and can only be changed by a body meeting once in two years, thus making it impossible to meet the varying conditions of trade. Such a law seems to us inadvisable from the standpoint of the true interests of the State, but it would not adversely affect us or be a matter for us to complain of *unless* it reduced our revenue.

Second—An extension of the powers of the Railroad Commission, so as to virtually give it absolute authority over all rates.

With this proposition is generally coupled the provisions of the Iowa law, which is unique in being a compendium of

all that is crude and ill advised in all the laws of all the States and the Nation. Aside from the very large powers given under this law to three men, who as a rule are wholly unacquainted with the matters they are called to pass upon, the Iowa law is absurd in many ways, and has inflicted great damage not only to the railroads but to the people of that State. It has benefited some twenty or twenty-five local jobbing merchants, at whose behest and in whose interests it was passed, and it has driven from the State its most prominent manufacturing interests. No farmer or retail merchant has been benefited by the law, but it has had the desired effect of forcing the Iowa retailer to buy of the Iowa jobber, by putting local merchandise rates lower than interstate rates, and shutting out the merchants of other States. Fortunately for Iowa railroads the State has no large markets within its borders, so that nearly all of its business is interstate and not affected by the very low local rates. Fortunately also, the roads crossing Iowa are mainly great trunk lines, hauling a large tonnage *across* the State, which is not affected by the local rates. The roads in Iowa that depend upon local business barely exist, not one of them pays anything to its owners in the way of return on invested capital.

The Iowa law places commerce in a straight jacket and prohibits competition.

The distance Topeka to Manhattan, via Union Pacific Railway, is 53 miles, via Atchison Topeka & Santa Fe Railway it is 83 miles.

Under the provisions of the Iowa law the Atchison Topeka & Santa Fe is prohibited from making the same rate as is made by the Union Pacific Railway, except under the penalty of making corresponding reductions in all its other rates, which, of course, is not to be thought of, and as a consequence competition is stifled wherever one line is longer than another. Under the Iowa law rates are absolutely inflexible, and no road is permitted to charge *more or less* than the rates prescribed by the Commission, so that no matter how desirable it may be to make concessions upon business principles, no

matter how anxious the roads may be to introduce new industries into the State or to deal with emergencies demanding concessions from the standpoint of the welfare of both railroads and people, they are debarred from so doing. The Iowa law was conceived in a spirit of unreasoning hostility to railroads, but while it has fulfilled the intentions of its promoters in injuring the corporations, it has injured the State and its people in far greater degree. That the Iowa roads have not been bankrupted is because of their great resources and strong geographical position, plus the fact that Iowa has comparatively but little local business.

The spirit in which the Iowa law was conceived is aptly illustrated by the following quotation from it, providing for evidence in the case of hearing on a complaint:

" And the burden of proof shall not be held to be upon the person or persons making complaint, but the commissioners shall add to the showing made at such hearing, whatever information they may then have or can secure from any source whatsoever, and the person or persons complaining shall be entitled to introduce any published schedules of *rates of any railroad company, or evidence of rates actually charged by any railroad company for substantially the same kind of service, whether in this or any other State*; and the lowest rates published or charged by any railroad company for substantially the same kind of service, whether in this or any other State, shall at the instance of the person or persons complaining, be accepted as *prima facie* evidence of a reasonable rate for the services under investigation."

It is difficult to conceive of a more outrageously unjust proposition than is contained in the foregoing sentence. The proposition that rates current in the State of New York, Massachusetts, Ohio or Indiana shall be taken as *prima facie* evidence that the same are reasonable in Iowa or Kansas, will not commend itself to the judgment of fair-minded men.

Third.—The bill proposing to reduce fares to two cents per mile.

That such a proposition should for a moment have serious

consideration indicates the prejudice which seems to obtain against railroads, as well as the prevailing ignorance of their methods and resources. With the exception of a few main lines the railroads are now transacting their passenger traffic without profit; almost every road in the State is running daily passenger trains which do not pay the wages of the train crew, simply as an accommodation to the public, and to make the towns along the lines desirable places in which to live.

In the early history of the Santa Fe its passenger rate was six cents per mile. Then it ran one train daily over its main line, with inferior equipment and slow time, and carried more people per train than it does now. In the early seventies thousands were taken into Kansas free, and in the grasshopper period ('74 and '75) the principal business of the road was carrying relief goods in for nothing and taking out the inhabitants on free passes. If in connection with the early work of peopling the State we had demanded our legal rates, Kansas would not have been settled; similarly, should we now demand our legal rate, there would be no large gatherings, such as Grand Army, Christian Endeavor, county and state fairs, political conventions, etc. This business differs in no manner from other business, in that if we can get fair prices for what we have to sell daily and at *retail*, we can afford to take less on special and on wholesale transactions. The train which must start daily in fair weather or foul, and run to its destination, whether it has any passengers or not, is a very different affair from the well-filled excursion train which is assured of fair earnings even though the rate per capita is low.

The two-cent rate prevails over one road in the State of New York, viz., the New York Central, and on one in the State of Michigan, viz., the Grand Trunk. It does not apply anywhere else, and the enormous travel between New York and Boston, and New York and Philadelphia, pays about 2½ cents per mile. The railroad commissioners of Illinois have just refused to grant a petition for a reduction of rates below three cents, on the ground that it would be un-

just to the railroads—if unjust in Illinois, how much more so in Kansas.

Considered simply as a matter of equity it would be entirely proper for the railroads of Kansas to *advance* their passenger rates to four cents, though no such intention is entertained. The passenger service in the State of Kansas is now far better than the returns from it warrant, and disclaiming all intention of making threats, I state only a self-evident truth when I say that it cannot be continued upon its present plane upon a lower basis of rates.

Wages in this country are higher, and transportation charges lower, than in any country in the world.

Out of every dollar the Santa Fe earns in Kansas it pays back at once about seventy cents for labor and supplies, and about eight cents more for taxes. In 1895 the net earnings in Kansas were about \$1,800,000, out of which \$800,000 was paid for Kansas taxes. What other industry or business in the State was taxed 44 per cent. of its income?

Nor is it true, as so often charged, that the persons who furnished the money to build the Kansas railroads have been richly rewarded; quite the contrary is the case. The men who furnished the money subscribed for Atchison Topeka & Santa Fe securities in the seventies are now earning less than $3\frac{1}{2}$ per cent. interest on their actual cash investment; those who subscribed for the securities offered in the eighties are now receiving less than two per cent. on their actual cash investments, and those who subscribed for the stock are now receiving nothing in return for the cash paid by them for such stock. And it should be borne in mind that every dollar paid in subscriptions for stock and bonds was used in the construction or improvement of railroads or the purchase of equipment.

The Atchison Topeka & Santa Fe Railway Company must of necessity take a deep interest in the prosperity of Kansas; it is doubtless spending more money and effort to develop the resources of the State to-day than any other agency; it is combatting prejudice and distrust, both within and without

the State. It desires to make a new record for the State and for itself—to build up its business and its prosperity so that the State may be proud of it; large expenditures of fresh capital for this purpose are in contemplation for the coming year, in addition to large sums spent last year.

When by the joint efforts of the railroads and the people we have assured prosperity and the population which that prosperity will attract, and when the railroads are paying anything like reasonable returns upon their cost, it will be time enough to discuss reductions in rates. Meantime do not advertise to the world that invested capital is unsafe in Kansas, or that resort to the courts is necessary to protect the rights of citizens against unreasonable demagogues, or honest but mistaken agitators, who imagine wrongs that have no existence, and believe that the interests of the State can be advanced by driving away capital or confiscating the property of others.

E. P. RIPLEY,
President the Atchison Topeka & Santa Fe Railway Co.

Rate Reductions in Kansas.

(A Letter by E. P. Ripley.)

I.

Chicago, June 5, 1897.

To the Honorable the Board of Railroad Commissioners of the State of Kansas.

Gentlemen:—I beg to acknowledge the receipt of the following communication:

“Office of Board of Railroad Commissioners, State of Kansas,
Topeka, May 28, 1897.

“MR. J. J. FREY, GENERAL MANAGER, A. T. & S. F. RY. CO.,
TOPEKA, KAN.

“Dear Sir:—At the conference held between the representatives of the railway companies doing business in Kansas and this board, on May 27, 1897, after the board had verbally stated its views with reference to a reduction of freight rates charged by the several companies for the carrying of freight, the representatives of the various companies requested the board to submit to the companies its views and wishes in writing.

“In accordance therewith, I am instructed by the board to say that it deems the following reductions reasonable, and asks that the same be made:

“A reduction of 20 per cent. upon the distance tariff schedule now in force in the State.

“A reduction of 20 per cent. upon existing coal rates.

“A reduction of 5 per cent. upon existing rates upon live stock.

“The board is of the opinion that the best way to arrive at this reduction, if the companies will agree thereto, is for the board to make an order covering the above mentioned rates,

and for the companies to agree to put them in force and effect within a reasonable time.

"Yours very truly,

"R. W. TURNER, Secretary."

At the recent conference at Topeka on the 27th ult., your board, through its chairman, stated in effect that the object of the conference was not to discuss the question of whether rates were too high, but simply to consider how much reduction should be made, and the representatives of the railroads were informed that the board had made up its mind that the rates were too high and that evidence to the contrary would be useless.

It is submitted with all deference that it was the duty of the board to proceed upon inquiry; to ascertain the facts before making its demands; to hear first and to thereafter determine; but that which the board did do was the converse of all this. Without inquiry, without evidence, and without a hearing, it finally decided a matter that everyone will concede should have been left open for discussion, at least.

Nothing can be more earnestly desired by the owners and operators of Kansas railroads, than that they should be on good terms with the people of the State; their interests are one and there should be no quarrel between them, and when differences of opinion arise, this company will be found ready to redress all real grievances, and to enter into friendly conferences with the people or their representatives, to the end that the material resources of the State may be developed to the greatest degree, and that justice be done to all. But to a demand for a general reduction, made without a hearing of any kind, I can make, in justice to the owners of the property entrusted to my care, but one answer, and I feel it my duty in declining to accede to your demand, to briefly give some of my reasons for so doing.

It is a matter of common knowledge that the rates now charged in Kansas are in no cases higher and in some cases lower than the rates in the surrounding States. In other States the conditions governing transportation by rail are

more favorable to the carrier than in Kansas, the population per square mile and per mile of road being greater, as is also the tonnage handled. It is true that in Iowa the rates published by the commission for roads earning \$5,000 per mile and upward are very low, and very unjust to the railroads, but it fortunately happens that the business covered by these rates is very small. So far as comparison may be relied upon as a guide to reasonableness of rates, Kansas is favored. Of all States west of the Mississippi River, Iowa alone has lower rates, but when we consider the vast difference in conditions, it will be seen that Kansas has nothing to complain of, even as compared with Iowa.

Iowa is all arable and well settled; one-third at least of Kansas is arid and affords its railroads but little business. There are hundreds of miles of road in Kansas which do not pay operating expenses, even with the most careful and economical management, and hundreds more that can make no return to their owners for capital invested; it is believed there is practically no road in Iowa which does not make some return to its owners.

A comparison of rates in Kansas with rates in Iowa having been invited, it is but fair that such comparison be made in the light of all those conditions which make possible or necessary any given rate in either State. It will not be contended that the comparison is a fair one, if conditions are different, and it is certain that conditions are different if, in one State, the railroads do more business than in the other, or if in one State the railroads must stand burdens which are not imposed in the other.

The average gross earnings per mile of all the lines operating in Iowa during the year 1895 were \$4,230, in Kansas, \$3,083; during the same year the average net earnings per mile on the Iowa lines were \$1,222 (in 1896 they were much higher), while in Kansas they were but \$697. This showing alone will satisfy any fair-minded man that the conditions in the two States are such as to make it impossible for the same rates to be maintained at the present time in each State; but

even if the Kansas companies did the same amount of business as the Iowa companies, the great additional burden of taxation borne by the Kansas roads would require that the rates there should exceed those charged in Iowa.

During the year 1896 the average amount per mile paid in taxes by the Iowa roads was but \$153, or 12 per cent. on their net income, while in Kansas the average amount paid per mile was \$259, or 37 per cent. of their entire net income. So that while the Iowa roads, after paying all their expenses and taxes, had left \$1,069 for each mile of road operated in that State for interest on bonds or dividends on stock, the Kansas roads for the same period had left for like purposes but \$438 per mile, which is the exact equivalent of 6 per cent. of \$7,300. Will anyone contend that rates which permit earnings on an average valuation of but \$7,300 per mile are too high? And will not every unprejudiced man admit that higher rates must be charged in a State where 37 per cent. of the net income is required for taxes than in a State where 12 per cent. of such income will suffice? If no higher rates of taxation were charged in Kansas than in Iowa, the net income of the Kansas roads would be increased nearly one million dollars. It is a fact of great significance that the railroads of Kansas annually return to the people of that State, in the form of taxes, nearly \$1,000,000 more than do the railroads of Iowa; an amount, it is believed, that more than offsets any difference in rates; and I submit that more people are benefited by the return of this amount in the way of taxes than would be the case if it were returned to a part of the people in the form of reductions in freight charges.

It is not pleasant to publicly proclaim the poverty of Kansas railroads, yet it seems necessary to this discussion. It is a matter of public knowledge, not only that a large portion of the mileage of the State does not pay expenses and that another large part earns no interest, but that practically none of it earns a fair return upon its cost or present value.

If the railroad companies of Kansas should enter into agreement with the people of Kansas, or with your honorable

Board, to charge only such rates as would produce a return of 4 per cent. on what it would now cost to reproduce the railroads of Kansas, they would be obliged to raise their rates to accomplish that result.

There is absolutely no margin for reductions in rates. No additional business could be secured thereby, and the railroads, struggling for existence under present conditions, simply cannot afford to give away more than has already been taken from them. Moreover, there is a grave doubt whether a reduction in grain rates would result in benefit to the Kansas producer. It is believed that as a rule such reductions simply result in lowering the general market, and that when rates are reduced it is the consumer and not the producer that gets the benefit.

Last summer there was a reduction in the corn rates from Kansas. On July 14, 1896, September corn was selling in the Chicago market at $28\frac{1}{8}$ cents per bushel. May corn was selling at $30\frac{1}{4}$ cents per bushel. On that day notice was given by one of the Kansas railroads of a reduction of 7 cents per 100 pounds in the rate on corn from Kansas to St. Louis, which rate became effective the 18th day of July. This made a similar reduction to Chicago. On July 18 September corn closed at 27 cents in Chicago, and May corn closed at $29\frac{1}{2}$ cents. On July 31 September corn sold at $24\frac{3}{8}$ cents and May corn was quoted at $27\frac{3}{4}$ cents. On August 26 a further reduction of 5 cents per 100 pounds on the freight rate on corn was made to both St. Louis and Chicago. On August 29 September corn sold in Chicago at $20\frac{1}{8}$ cents and May corn was quoted at $25\frac{5}{8}$ cents. On September 10 September corn closed at $20\frac{1}{8}$ cents and May corn at $23\frac{1}{8}$ cents. These figures show a total reduction in the freight rate from July 14 to September 10 of 12 cents per 100 pounds, which is equal to 6.72 cents per bushel. The decline in the market during the same time approximated 8 cents per bushel in September corn and 7 cents per bushel in May corn, showing that at the end of three months' war in rates the position of the Kansas corn producer to the Chicago market was relatively worse than

before the rates were reduced. In other words, the decline in the Chicago market absorbed the entire reduction in the freight rate. It is the experience of all that general reductions in grain rates have been invariably followed by corresponding declines in the market price of the article moved.

Your board asks for reductions in coal rates presumably to benefit the consumer, and in grain rates to benefit the producer. If reductions in rates benefit the producer alone, then the sole beneficiary of a reduction in coal rates is the miner. We all know that this is not the case. The only result of the reductions asked for on grain would be to further impoverish the railroads; to force the abandonment of many miles of road; to reduce the number of employes and the wages of those remaining; to make track and bridges less secure, and the service in all respects inferior, and all this with little or no benefit to the producer.

It is peculiarly unfortunate, as well as peculiarly unjust, that this demand for a wholesale reduction of rates should be made at the time when, after five years of adversity, the State of Kansas is apparently entering upon an era of sounder prosperity than it has ever before known. I am informed (and my observation confirms the statement) that never before has the farming community of Kansas been more prosperous than at the present time. That there have been periods when land was held at higher prices; when debts were being made faster and when the volume of paper transactions was larger, may be true, but it is believed that there is now less debt and more actual money in the hands of the people than ever before. When crops failed and starvation threatened, we hauled supplies and seed free of charge, and in many cases donated seed. Is it too much to hope that the railroads, which have all been driven to bankruptcy or dangerously near it, in the years of adversity, should now be permitted some share in the prosperity? When our business was depleted by successive crop failures, we did not raise the rates. Why should we be expected to lower them in the first year of plenty?

I respectfully submit that your honorable Board can mor-

ally or legally sustain your contention that rates should be reduced only upon one or both of the following hypotheses:

First—That rates are now unreasonably high in themselves.

Second—That the railroads are making too much money, or, in other words, are getting a greater return on invested capital than other enterprises are receiving.

I assert the negative as to both of these propositions, and stand ready to produce the proof upon opportunity being afforded.

It is a matter of deep regret that I find myself unable to comply with the suggestions of the Board, but absolute confidence in the justice of my contention, and my sense of duty to the owners of the properties entrusted to my care, leaves me no alternative.

Yours truly,

(Signed)

E. P. RIPLEY.

II.

(A Letter by W. H. Truesdale.)

Chicago, June 22, 1897.

R. W. TURNER, ESQ., SECRETARY BOARD OF RAILROAD COMMISSIONERS, TOPEKA, KAN.

Dear Sir:—I have received your communication, in which it is stated that the railroad commissioners ask the railway companies doing business in Kansas to make the following reductions in rates :

“A reduction of 20 per cent. upon the distance tariff schedule now in force in this State.

“A reduction of 20 per cent. upon existing coal rates.

“A reduction of 20 per cent. upon existing grain and grain produce rates.

“A reduction of 5 per cent. upon existing rates upon live stock.”

The Rock Island company appreciates fully the friendly spirit which actuated the commissioners in calling the conference recently held respecting these rates, and greatly regrets that it is unable to make the reductions recommended by the board.

A request for such sweeping reductions must be predi-

cated upon a mistake of facts respecting not only the earnings of railway companies in this State, but of rates made generally under like circumstances.

Any business which could stand such reductions must be immensely profitable. The railway companies of this State are not immensely profitable ; they are not even fairly prosperous. Many of them are bankrupt ; none of them pay a fair return upon the capital invested in them.

These companies are subject to many vicissitudes and burdens in this State which they do not encounter in like degree to other States. Crops are uncertain. It is either a feast or a famine. For a few months or days in some years it is difficult to obtain cars to move the crops. The next year crops fail and side tracks are crowded with rotting freight cars and the roundhouses are filled with idle engines.

The burden of taxation is enormous. More than 40 per cent. of the aggregate net earnings of railway companies in Kansas is required to pay taxes, while for the United States the rate is only 8 per cent. Instead of growing less this burden is being increased from year to year. The assessment of this company has been largely increased. It cannot meet this additional expense by reducing its earnings.

Kansas has more miles of railway per capita than any other Western State and no road depending wholly upon its earnings in this State has for several years been able to pay actual operating expenses, not including interest on bonds or dividends upon stock. It is hardly fair to require the railways of this State to be operated at the expense of citizens of other States .

From the fact that the board demands a reduction as to certain specific rates, it may be inferred that it is believed that these rates are not fairly adjusted as respects other existing rates. Such a belief is not justified by the facts.

A reduction of 20 per cent. upon the distance tariff is demanded. It is contended that because but little traffic now moves under the present distance tariff a reduction in such rates would not seriously injure the railroads. This is not true. The reduction proposed is so great that it would reduce

distance tariff rates below many terminal and jobbing rates and would necessarily result in a large reduction of revenue.

The present distance tariff is low enough as compared with other rates. Traffic carried under this tariff is generally in small lots, moved for short distances. The cost of transporting such traffic is more than twice as great as that of moving carload freight for longer distances. Among the elements of increased expenses are: The hauling of cars only partly loaded; delay of trains in loading and unloading freight at local stations; station service in loading and unloading. Carload freight is generally loaded and unloaded by consignor and consignee, while less than carload shipments must be handled by the carrier.

For the purpose of ascertaining the proportion which each class of freight bears to the total tonnage and revenue of freight transported over its line this company made an abstract of its freight business for the year 1887, showing the proportion which each commodity bore to the total tonnage, with the revenue derived therefrom, and it was found that the local tonnage, that is, tonnage transported wholly within State lines, was 35.04 per cent., earning only 19.88 per cent. of the entire revenue, while the interstate freight, amounting to 64.96 per cent. of the entire business paid 80.12 per cent. of the entire revenue earned. This statement includes not only freight moved on local distance tariffs, but freight moved within State lines upon jobbing and other tariffs. The proportion of freight moved locally in Illinois and Iowa is much greater than that moved in Kansas. It is believed that a like investigation applied to the local business of this company in Kansas would show that the local business pays an even smaller percentage of the entire revenue in proportion to its volume than is obtained in the other States referred to; and it is certain that if such a statement were confined to the business done under the Kansas distance tariff it would show that such business falls very far short of paying its just proportion of the expense of transportation.

Another objection to the proposed distance tariff is that it

is excessively low. At the conference between the railway commissioners and the railroads, reference was made to the Iowa distance tariff. There are many reasons why a distance tariff which might even be reasonable in Iowa might be unreasonably low in Kansas, but no one seriously contends that the Iowa distance tariff is reasonable even as applied to traffic in Iowa. The local traffic in that State does not bear its fair share of the cost of transporting it.

In 1894 certain railway companies operating in Iowa asked the railway commissioners of that State to increase local rates. A majority of the commission denied this request, not on the ground that the local rates paid their full and fair proportion of the revenue earned by the railway companies, but on the ground that the "local and interstate business combined are now paying and have paid, ever since the present schedule of rates has been in force, their full and fair proportion of the revenue of the petitioning railways."

Mr. Commissioner Dey, a man of long experience on the board, and of national reputation, dissented from the opinion of the majority, expressing the opinion that the local business of Iowa should bear a greater proportion of the cost of operation than it then did and that it was unfair that the local business of Iowa should be done at a loss at the expense of the general business of the carriers.

It is believed that the greater part of the freight moved under the distance tariff is carried an average of less than 50 miles. Ordinarily freight moving a greater distance will be carried under some other tariff. A comparison of the proposed distance tariff with the distance tariff now in force in Illinois, on freight moved within a distance of 50 miles, will show that the proposed tariff is very much lower than the Illinois tariff. It is submitted that no reasonable man will contend that local freight can be moved in the more sparsely settled State of Kansas as cheaply as it can in Illinois. Under the Illinois distance tariff the rate on the first five classes for 4 miles and over 2 miles is: 11.28; 9.40; 6.58; 5.26 cents. Under the proposed Kansas distance tariff these rates would be

for 5 miles: 10.04; 8.8; 7.2; 5.6; 4.8 cents.

The Illinois tariff for 10 miles for the same classes: 15.04; 13.16; 11.28; 8.46; 6.76 cents. Under the proposed Kansas tariff: 12; 10.4; 8.8; 7.2; 5.6 cents.

For 20 miles on the same classes in Illinois: 18.80; 16.92; 14.10; 10.34; 8.27 cents. Under the proposed Kansas tariff: 16; 13.6; 12; 10.04; 7.2 cents.

In Illinois for the same classes 50 miles: 29.14; 23.50; 19.74; 14.10; 11.28 cents. Under the proposed Kansas tariff: 25.6; 23.2; 20; 16.8; 12 cents.

This company has no coal mines on its lines in this State and therefore does not receive full local rates on such shipments. It brings coal to the State from mines in Colorado and Iowa at very low through rates. For coal mined in Kansas and Missouri it receives only a low proportional part of a low through rate. To reduce the rates which it now receives 20 per cent. would compel it to do its coal business at an absolute loss. Coal rates in this State are on the average lower than in surrounding states and are much lower than on European railways.

In the densely populated Prussia the rate on the government railway for 50 kilometers, or 31.07 miles, is 1.7 cents per ton per mile; for 100 kilometers, or 62.14 miles, 1.2 cents per ton per mile; for 500 kilometers, or 310.07 miles, 8 mills per ton per mile; for 1,000 kilometers, or 621 miles, 8 mills per ton per mile.

In addition to a 20 per cent. reduction on the grain schedule in the distance tariff the commission asks the railways to reduce their terminal grain rates 15 per cent. These rates are already very much lower than the rate in any western State for like distances to any important market. Under such circumstances it would be unreasonable to require them to be reduced, and no good would follow to the people of this State. It is as much more to their interest to have the railway companies fairly prosperous as to have any other enterprise in the State prosper.

A very large per cent. of the money earned by railway

companies is paid out in the State for operating expenses and in adding facilities for the public convenience and safety. The competition that producers in this State meet when they come to dispose of their products is largely a market competition and not a railway competition. A reduction of rates from one producing section of the country necessarily compels a like reduction in another when the two sections compete in like markets. Nothing is gained by either section by these reductions. On the contrary they both lose, because they receive no more for their products and less money is saved at home. It may benefit the consumer in Europe to have the different localities in the United States competing with each other to supply the European demand for grain and grain products, but it does not benefit the people of the United States to compel the carriers to transport grain and grain products to foreign markets at unreasonably low rates. All that the people of any section ought to require is that there should be no unreasonable discrimination against them in favor of those who compete with them in the same markets.

The fact, and it is a fact, that grain for export has brought a better price in Kansas during the last year than in surrounding states, that the railways of this State have protected its interests in that regard. In fact, railway companies are as much interested as the producer in protecting the markets along their lines. If the rates, as compared with the rates of some other producing locality, are prohibitory the products will not move and the railway companies are without business. Market competition is the most powerful factor in fixing prices of all commodities, including transportation. It is not subject to legislative control. It cannot be controlled by railway companies or localities.

As showing how the reduced rates, as required by the commission, on grain and grain products, from points in this State to Kansas City, would compare with rates on like products from points in Iowa to Chicago, the following statement is submitted. The rates are in cents per 100 pounds:

From	To	Dis- tance.	Wheat.	Corn.
Iowa City, Ia.....	Chicago	237	15.	14.
Mankato, Kan.....	Kansas City	236	11.9	10.2
Marengo, Ia.....	Chicago	268	16.	14.
Smith Center, Kan.....	Kansas City	268	13.2	11.5
Malcolm, Ia.....	Chicago	294	16.	15.
Phillipsburg, Kan.....	Kansas City	298	13.6	11.9
Reasnor, Ia.....	Chicago	333	17.	15.
Norton, Kan.....	Kansas City	332	13.6	11.9
Menlo, Ia.....	Chicago	403	20.	16.
Colby, Kan.....	Kansas City	402	14.4	12.8
Walcott, Ia.....	Chicago	195	12.	12.
Salina, Kan.....	Kansas City	197	10.2	9.3
West Liberty, Ia.....	Chicago	222	15.	14.
Hutchinson, Kan.....	Kansas City	222	11.	10.2
Ladora, Ia.....	Chicago	275	16.	14.
Pratt, Kan.....	Kansas City	275	13.6	11.9
Letts, Ia.....	Chicago	223	12.	11.
Wichita, Kan.....	Kansas City	222	10.2	9.3
Perlee, Ia.....	Chicago	270	15.	14.
Caldwell, Kan.....	Kansas City	272	10.2	9.3

These stations were selected from points on the lines of this company as showing fairly a comparison between existing rates to Chicago and the proposed rates to Kansas City, and it is submitted that no good reason can be given why the company should be required to make so much lower rates than it makes at the same time to Chicago.

LIVE STOCK RATES.

There is no place in the world where so many pounds of live stock can be transported a given distance for the same money as in the State of Kansas, and in view of that fact, it seems wholly unreasonable for the board to ask a still further reduction of 5 per cent. on existing tariffs. The following statement compares the present rates on cattle in carloads of 26,000 pounds in 36-foot cars, from points in Iowa to Chicago, with the proposed rates on cattle for like distance from points

RATE REDUCTIONS IN KANSAS—TRUESDALE. 175

in Kansas to Kansas City. The mere publication of such a table ought to be enough to satisfy the board that the reduction asked ought not to be made:

From	To	Dis- tance.	Rate.
Iowa City, Ia.....	Chicago	237	\$52.00
Mankato, Kan.....	Kansas City	236	29.26
Marengo, Ia.....	Chicago	268	57.20
Smith Center, Kan.....	Kansas City	268	31.35
Malcolm, Ia.....	Chicago	294	57.20
Phillipsburg, Kan.....	Kansas City	298	31.35
Reasnor, Ia.....	Chicago	333	57.20
Norton, Kan.....	Kansas City	332	35.53
Menlo, Ia.....	Chicago	403	61.10
Colby, Kan.....	Kansas City	402	47.02
Walcott, Ia.....	Chicago	195	39.00
Salina, Kan.....	Kansas City	197	31.35
West Liberty, Ia.....	Chicago	222	52.00
Hutchinson, Kan.....	Kansas City	222	36.57
Ladora, Ia.....	Chicago	275	57.20
Pratt, Kan.....	Kansas City	275	36.57
Letts, Ia.....	Chicago	223	46.80
Wichita, Kan.....	Kansas City	222	36.57
Perlee, Ia.....	Chicago	270	54.60
Caldwell, Kan.....	Kansas City	272	37.10

The feeding in transit arrangement which the Kansas City railways have in effect on cattle coming from the ranges in Texas, New Mexico and Arizona, by which Kansas farmers and feeders can buy stock cattle and sheep, and by paying a through rate from original shipping points to Kansas City and markets beyond plus a charge of \$10 per car, is a most favorable one to the farmers and cattlemen of Kansas.

Under this arrangement during the past year many thousand carloads of cattle have been brought into Kansas, fattened on the cheap corn there and taken to market, affording the feeder large profits, as a result of the transaction.

This feeding in transit privilege is enjoyed almost ex-

clusively by the States of Kansas and Nebraska, it not applying on cattle fed in States east of the Missouri river.

We respectfully urge that some consideration should be given the railways of Kansas at this time in urging reductions in their rates, for the large amount of free transportation they furnished on seed grain, clothing and sundry necessities of life, transported by them both within and without the State during the years 1894 and 1895, when crops in your State were a failure and many of your farmers were without either seed or grain or the bare necessities of life.

In addition to furnishing free transportation to a very large extent, this company also bought and furnished many of the farmers with seed grain, taking their notes therefor. A large sum of money is still due this company on this account, much of which will never be repaid.

This company owns more miles of railway in Kansas than in any other State and takes a lively interest in the welfare and prosperity of the people of the State and will, so far as it reasonably can, having due regard to the rights of its patrons in other States, at all times protect the interest of the people of Kansas in the matter of transportation, believing that by so doing it will protect and promote its own interests, and it believes that is all the majority of right-thinking people of the State will require of it; and that they desire to see it prosperous and do not desire to see it driven to bankruptcy.

W. H. TRUESDALE.

On Two-Cents-Per-Mile Passenger Rates.

BY JAMES CHARLTON.

Mr. Chairman and Gentlemen of the Committee:—My first duty is to thank you, which I do most sincerely, for this opportunity of presenting the case of the railroads. My next duty is to assure you that I will occupy as little of your time as possible, and will try to speak with the utmost plainness, and without offense.

Mr. George H. Daniels is the general passenger agent of large sum of money is still due this company on this account, the New York Central Railroad, one of the greatest railroad corporations in this country. Mr. Daniels is a gentleman of very broad and liberal views, and as painstaking in research as he is careful and measured in speech. For those reasons, and also because his road is identified to a limited extent with a two-cent rate, I venture to quote the opening paragraph of his argument before the Legislature of Ohio against a two-cent bill:

“In view of the fact that the world’s entire stock of money of every kind—gold, silver and paper—would not purchase one-third of its railroads, we should approach legislation concerning them in the most careful and conscientious manner, and with the determination to do only what is right and just, having always in view the rights and duties of the whole people, as well as those of the owners and managers of the railroads. A spirit of the utmost fairness should pervade all legislation in reference to transportation, for the reason that this great interest is more closely identified with, and is more essential to and dependent upon, every other important interest in the country than any business you can name, and whatever is detrimental to the welfare of the railways of the country is detrimental to the best interests alike of the farmer, the mechanic, the merchant, and

the common laborer. The prosperity of the railroads means the prosperity of every other legitimate commercial enterprise, and when the railroads suffer from depression, every important interest in the country suffers with them."

The foremost thinker in American literature wrote of one "who builded better than he knew." The reverse of that is not only possible, but common, and those who thoughtlessly, idly, maliciously, or selfishly, without proper knowledge and due forethought, interfere with great interests, build worse than they know, and those who build worse than they know are unfortunately greater in number than those who build better than they know.

The railroad interest of this country is one of the largest in the land, and is entitled to at least the same protection that is given to any other interest. Railroad proprietors are numerous, and some of them are as poor as any of us. Whether rich or poor, they are entitled to the same protection as the farmer, or merchant, or any other citizen. There is no reason why their property should be wrecked and their revenue depleted. In touching the revenue of railroads you are not only disturbing and destroying the rights and properties of shareholders, rich and poor, but you are affecting disastrously the fortunes of workingmen, clerks, station agents, and others, and do not forget that the majority of clerks and station agents are not paid even as high wages as engineers and conductors. The railroads of this country employ about one million of people. It would be an under-estimate, therefore, to say that five millions of people are dependent, directly or indirectly, on the railroads. Touch the revenue of these railroads, and you interfere with the means of living of five millions of people. Allow me to quote from page 7 of the latest report (1895) of the Railroad and Warehouse Commission of this State, as to the number of people who will feel the effects of anti-railroad legislation in Illinois:

"Averaging four persons dependent on each person employed on railroads in this State, gives a total of 251,020 individuals whose livelihood is entirely obtained from railroads

in this State. Taking all the allied trades and lines of business dependent on railroads, it is within bounds to say that one person in eleven gains his or her living, directly or indirectly, through railroads."

If you will not permit the railroads to earn money, they cannot pay sufficient wages to their employes. The final result of that is reached by easy stages; decreased wages, strikes, riots, bloodshed, loss of life and property, perhaps even revolution. The cost to the State of Illinois of such an experiment would probably be one hundred times or over any saving that can be affected by reduced rates.

Who will gain by reduced rates? The merchant, manufacturer, and all those who can afford to travel for business or pleasure. Those who travel for business make it pay, and can afford to pay reasonable rates. Those who travel for pleasure are well enough off to afford the pleasure, and do not need to be protected against the reasonable rates which now prevail. The poor man will not be a gainer by reduced rates. He does not travel a great deal. He cannot afford the loss in wages and the cost involved. On the average, reduced rates would probably not save workingmen in this State ten cents each per year. But that which will save a workingman such an insignificant sum, and save more to those to whom it is not a felt burden to pay, will cost railroads millions, and will eventually affect the wages of railroad employes, and the prosperity of the State, because those railroad employes are citizens and voters in your State, and live in it and expend their wages in it.

Statements have been made that railroad rates have not decreased in the past twenty-five years, while everything else has been coming down. On the contrary, railroad rates have decreased in greater proportion than anything else. Not only have railroad rates decreased in the last twenty-five years, but railroad dividends have decreased also. The Chicago & Alton to-day is paying 20 per cent. less to its shareholders than it paid twenty-six years ago, when I first entered its service. I hope that I will not be held accountable for that. At that time, and for a long time after, namely, until 1884, the rate from

Council Bluffs and Omaha to San Francisco was \$100; to-day it is \$50. Consequently, at that time the rate from Council Bluffs and Omaha to San Francisco was \$37.50 higher than it is to-day from Chicago to San Francisco. At that time the rate between Chicago and Kansas City was \$21; to-day it is \$12.50. At that time the rate between Chicago and St. Louis was \$11; to-day it is \$7.50. At that time the rate between St. Louis and Kansas City was \$12; to-day it is \$7.50. At that time the local rate on the Chicago & Alton was 5 cents per mile; to-day the local rate is 3 cents per mile, and the actual average rate which we obtain is 2.022 cents per mile. On page 5, last report (1895) of the Railroad and Warehouse Commission of Illinois, the Commission show that "rates in 1870 for passengers were about 46 per cent. higher than in 1895." I have yet to learn that there has been any such reduction in anything else.

The figures of the Interstate Commerce Commission ought to be acceptable as authority, and they show that in a group of States, in which they include Illinois, it cost more per passenger per mile to carry a passenger than the Chicago & Alton for many years has earned per passenger per mile.

Not only have our rates decreased, but wages and other outlays, and especially taxes, have increased. In 1880, taxes paid by the Chicago & Alton amounted to \$147,413.53, and in 1896 to \$315,745.48, the percentage of taxes to net earnings having increased from 4.24 per cent. in 1880 to 11.27 per cent. in 1896. Between 1880 and 1896 we have not added to our mileage or to our property in any way. "The taxes have each year been assessed upon exactly the same property."

While rates and dividends have decreased, and wages, taxes and other outlays have increased, our accommodations to-day are vastly superior to what they were twenty-five years ago. Our track has been improved for safety, and our equipment has been increased in quantity and quality for convenience and comfort, and we run to-day over twice as many trains as we ran twenty-five years ago, and receive less for this increased service than we did then for the smaller service

which we rendered at that time. In confirmation of this, permit me to quote a paragraph from a pamphlet written and published by Mr. Henry Apthorp, ex-Railroad Commissioner of Ohio:

"The cost of carrying passengers on steam railways, as they are carried, has not been reduced. The cost has increased, especially during the last twenty years. The quality of passenger train equipment and service has been improved, and this improvement has been made at increased cost to the railways. Passenger coaches have been improved, and they cost about twice as much as they did forty years ago. Wages are higher, many safety appliances have been added, safety heating and better lighting have been put on, station accommodations and service have been improved, more efficient inspection and safety signaling have been provided, the speed of trains has been increased, the tracks have been made better, and all this improvement at increased cost. Many of these improvements are in the nature of insurance to the public against accident. Travelers ought to be willing to pay something on this insurance, but they are not asked to. Rates have not been advanced to correspond with benefits; on the contrary, average passenger rates have been voluntarily reduced in most of the States. The present rates buy more traveling advantages now than they did forty years ago.

"Within the past few years, on many railroads, the speed of many passenger trains has been increased almost one-third. This is a saving of time to each passenger on the trains with no additional charge, but with increased expense to the railways, for it costs more to run a train fast than to run it slow. On the other hand, during the past forty years, population has almost doubled, and, owing to the increased mileage of railways, no doubt the number of passengers carried on all the railways has more than doubled. But this does not prove that the cost per mile of carrying passengers has lessened. It is met by the fact that an increase in passenger traffic requires an increase of passenger trains. If the increased passenger traffic required only the addition of more cars to the

number of passenger trains that used to be run, the claim of cheaper cost of carrying would have great force; but the fact is that, to satisfy the increased aggregate of passengers carried, more trains have to be run. The number of cars per train, and the number of passengers per train, have not increased very much, if any. Furthermore, the passenger traffic on new and on poor roads now is no greater than was the passenger traffic on such roads forty years ago, and in some cases it is not so great. If three or four cents was a just rate to roads doing a small business then, why is it not a just rate to roads doing a small business now?"

Competition and other causes in the interest of the public preclude us from collecting on all our business the legal rate of three cents per mile. We are unable to collect it on our through business from terminals to terminals. That compels us to grade our rates to some distance from terminal points to terminal points. From circumstances over which we have no control, through rates made from points east of us to points west of us, and vice versa, and from points north of us to points south of us, and vice versa, are not always made in such way as to admit of our taking out of them as our proportion our full local rate. Also, as common carriers, we feel that we ought, as far as we reasonably can, to make special rates for meetings and great gatherings, so as to enable the public generally to participate in the same. We also make very low rates for special week-end excursions to great cities on the line of our road. This is done to enable workingmen, shopmen and others who cannot afford to lose a day's wages, and who cannot afford to pay regular rates, to have a pleasure excursion once or twice a year. Then there is a large and increasing commutation business which will not bear full rates, and which, on that account, and also on account of street car and electric car competition, we are compelled to perform at extremely low rates. All this involves that with a legal rate of three cents per mile, we get sometimes an average rate of two cents per mile, and sometimes less. In the years 1893 and 1895 the average figures were less than two cents per mile,

Prejudice has sometimes been created by the point being made that some mythical railroad magnate sometime, somewhere, Heaven alone knows who and when and where, said the traffic should be made to bear all that it can pay. The real truth is that a railroad traffic official is always figuring on how little he can charge, and still leave a minimum of profit. That is the secret of success, namely, to move the largest number of people at the least possible rate, and which will still afford a minimum of profit. The object is to have rates that will yield a profit, and will at the same time develop the largest possible business. If you will leave us alone to competition, and the necessity of creating business to raise much needed revenue, that will far too quickly bring about reductions in a way that will do the least hurt to all interests. That will also inexorably preclude us from attempting to maintain unreasonable rates, even if we had the slightest disposition to do so, which we have not.

As compared with other countries, our accommodations are better, and our rates and dividends are less. Mr. Henry Apthorp, ex-Railroad Commissioner of Ohio, states that the Parliamentary trains of England, on which two cents per mile are charged, "Have no cushioned seats, but hard boards, no water closets, no drinking water, and no heating—a sort of box-car accommodation, such as tramps in this country, in stormy weather only, prefer to steal rather than walk. It is universally admitted that the railway service in the United States, in station and train accommodations, is greatly superior to any railway service in the world of the same class and price."

The railroad rates in England are: First-class, six cents per mile; second-class, four cents per mile; and third-class, two cents per mile. As this differs slightly from some reports you have heard, I wish to explain. The English rates in English currency are: First-class, three pence; second-class, two pence; and third-class, one penny. The English shilling is the equivalent of the American quarter. It has more purchasing power in England than twenty-five cents has in this country, but we will take it at less than the American quarter

and count it as only twenty-four cents. Thus, three pence is the fourth of a shilling, or six cents; two pence is the sixth of a shilling, or four cents; and one penny is the twelfth of a shilling, or two cents. I have already quoted a passage showing the very inferior accommodation which is afforded in England at two cents per mile, and it may be added that the accommodation which we afford in this country at a legal rate of three cents per mile, and which brings only an average rate of two cents per mile, is certainly superior to the accommodation in first-class cars in England at six cents per mile.

"A recent report of the British Board of Trade shows that the average profit on all capital invested in English railways in 1887 was 4.08 per cent., as compared with 3.4 per cent. in the United States, notwithstanding the fact that the capitalization per mile is four times as great in England as in the United States."

The higher rates which are obtained in England are obtained in a country in which the population is much denser than it is with us. In England the population is 541 to the square mile. In the United States it is 23 to the square mile. In Great Britain and Ireland the total miles of railroad are 20,321; inhabitants per mile of railroad, 1,938. In the United States the total miles of railroad are about 180,000; the inhabitants per mile of railroad, 380. In Illinois the total miles of railroad are 10,430; inhabitants per mile of railroad, 395. "England, with a population per square mile twenty-three times greater than the United States or the State of Illinois, has a third-class rate higher than the average first-class rate here."

Fictions, struck to earth, rise again livelier than truth and more mischievous than ever. There is a fiction which appears to have immortal life that there exists a two-cent rate in the State of New York. That rate is in force on a portion of the New York Central, but nowhere else in New York State, and it does not apply to through business even on the New York Central. Except on a portion of the New York Central

railroad, three and three and one-half cents is charged and permitted by law. Besides, if the rate in New York State were two cents, that would be the strongest argument for the rate in Illinois being about four cents per mile, as the population per square mile in New York State is more than double the population per square mile in Illinois. If, therefore, the statement made about the rate in the State of New York were true, instead of being untrue, it would be just the kind of argument which I should address to you if I were pleading for an increased rate in Illinois. But I do not plead for that. I have always been a low-rate man. I have always been, as I am now, in favor of rates being as low as they can fairly be made with due regard to all interests. I am not speaking for railroads alone. I sold my services, and not my conscience, to railroads, and I am talking here and now just as much, or more, in the interest of five millions of citizens as I am talking for railroads. I plead for those citizens who have as much, if not a larger, interest in this question than railroad proprietors. The railroads cannot continue to pay fair living wages if you will not permit them to collect a reasonable revenue, and it is not alone railroad employes that are interested. They spend their wages for the necessities and comforts of life, and a large number of people derive profit from those expenditures.

It is said that population has increased, and there are so many more people to carry that railroads can afford to carry them at a lower rate per head and still earn more than was earned years ago. To this I reply, population has not increased in proportion to the increase in railroads and the number of trains and superior, and consequently more expensive, accommodations and faster time of trains and limited special fast trains, all of which mean enormously increased expenses. Twenty-six years ago, when I lived in St. Louis, there were only two lines between St. Louis and Kansas City. Now there are four. Twenty-six years ago, when I first came to Chicago, there was only one line between Chicago and Kansas City. Now there are seven. Then there were only two lines between Chicago and St. Louis, and the Chicago & Alton did

about 83 per cent. of the business. Now there are three lines and the Chicago & Alton does not do 50 per cent. as much of the business as it did then. The increase in the number of roads makes it needless to dwell on the increase in the number of trains, but each of these roads is running to-day twice as many, if not more, trains than any one road in the same territory ran twenty-five years ago.

It has been said that some of the lines in Illinois might be able to stand a two-cent rate. It is assumed that the Chicago & Alton is one of the lines included in this supposition. It may, therefore, be expected that something should be stated at this time as to the position of the Chicago & Alton. The Chicago & Alton, gentlemen, is a purely and exceptionally American railroad. It is owned by native-born American citizens who live in this country and expend their incomes in it. Its directors are American citizens by birth. It is officered by American citizens by birth, except two subordinates, who do not direct its policy, and who, at any rate, were caught young. One of them has been over forty years in this country, and both are perfectly acclimated, mild and harmless, and innocent of foreign habits and opinions, and perfectly up-to-date citizens. I mention all this merely because one country editor who demanded an annual pass for his wife and did not get it, and another who traded or loaned his editorial ticket and consequently had it taken up, suddenly became possessed with the insane idea that the Chicago & Alton was a foreign corporation because it would not submit to be blackmailed or swindled, and they have assiduously devoted themselves to the missionary work of spreading the opinion that we were a foreign corporation because we objected to dishonesty.

The Chicago & Alton, before my time, was bought at sheriff's sale, and the then buyers, who are still holders of Chicago & Alton stock, instead of taking the earnings of the road, put these earnings into the track and equipment year after year. The road and equipment and financial standing of the company were not at that time very good, but by spending

the earnings of the road, instead of taking them in dividends. it was speedily brought to a comparatively high state of perfection. Its capital account to-day is thirty-five millions. It paid last year, and for some years previously, 8 per cent. to its stockholders. The road cannot be duplicated to-day for seventy millions. In any talk about watered stock, the Chicago & Alton must be left out. Its stock has not only not been watered, but it has been boiled down. To-day the road and equipment has cost twice as much as its capital account represents. If we were paying dividends to-day on the actual amount invested, instead of that amount boiled down, we would not be able to pay 2 per cent. Practically, therefore, the Chicago & Alton is paying its stockholders to-day less than 2 per cent.

I do not say that you can sell the Chicago & Alton to-day for seventy millions instead of the thirty-five millions for which it is capitalized, but I do say that it has cost its shareholders seventy millions, instead of the thirty-five millions at which it stands in the books of the company.

Its depot properties and facilities in the cities from which, to which, and through which it runs, added to its other properties, would treble or quadruple its present capitalization. But who would buy it to-day at its value based on what it pays, or what it has cost to the shareholders, or what its valuable terminal and intermediate depot privileges would cost if they had to be purchased to-day? What incautious buyer would have the amazing, the superlative temerity to put money into an enterprise against which adverse legislation and poisoned public prejudice is incessantly and relentlessly directed? I have served railroads for over fifty years. I do not own one share of railroad stock, and, to-morrow, if I were a millionaire several times over, I would not invest one dollar in railroad stock. I would put it into farms or other real estate which legislation and public prejudice have not as yet attacked.

Permit me to illustrate the position of the Chicago & Alton by a parallel case. You buy 160 acres from the National Government for \$400, and improve it, and put time and work and money in it, and increase its value to \$16,000, which is not

an exceptional case, as there is plenty of land in Illinois and other States to-day, which was bought at \$2.50 per acre, and is now worth \$100 per acre. After increasing the value of your farm, you do not purpose sitting down and giving away to the National or State Government, or to any class or interest in the State, any portion of the increased value of your farm, nor would you admit for a moment that the National or State Government had a right to compel you to accept interest of 4, or 6, or 8 per cent. on the original investment, instead of receiving the full receipts on the present value of the farm. What you would not do in the case of a farm, or in any other case, what right have you to do in the case of a railroad? Besides, it is surely not a sin to earn 4 or 8 per cent. per annum. A man goes into saloon business with a capital of \$100 or less, and earns thousands a year. Nobody claims that he should not be permitted to do so and nobody claims that he should only be permitted to have a certain rate of interest on the original investment, instead of the large earnings which he obtains. The same is true of farming, of manufacturing, and of all the industries in the country. I do not suppose that any member of this committee, or any member of the Legislature of Illinois, would be in any particular hurry to enter into a business which would pay him only the small percentages which railroads are paying. Why should you make any difference between a railroad shareholder and a farmer, a manufacturer, a wholesale dry goods man, a groceryman, a saloon keeper, or anyone engaged in any industry of any kind? They are all men, citizens and voters, and should be treated alike, and no exceptional or special legislation should apply to any of them.

As to the ability of the Chicago & Alton to stand a two-cent rate: I have already quoted from the report of the Interstate Commerce Commission that the Chicago & Alton for some years has not been receiving per passenger per mile as much as the Interstate Commerce Commission report shows it costs to carry a passenger. The Chicago & Alton has the reputation of being the best local passenger railroad in the State of Illinois, having more large towns to serve, and there-

fore better earnings from passenger train service. Notwithstanding that, hardly one of our strictly local trains is at the present time paying the average cost of operation. For the year 1896 the average cost of running our passenger trains was about 70 cents per mile; for 1895 it was 74 cents per mile, and for 1894 it was a little over 75 cents per mile. These figures are below the usual actual cost, because we did no work upon the road, or on cars or locomotives that could be avoided. We spent just as little money as was possible to keep the road in operation. In good times, under normal conditions, a fair average cost per mile for each passenger train would be at least 85 cents per train mile. We have had prepared a statement of train earnings from February 16 to March 11, 1897, as follows:

No.	Between—	Trip	
		Miles.	Average. Per Mile.
1	Chicago and East St. Louis....	280	197.42 71 cents
2	Chicago and East St. Louis....	280	197.15 70 cents
17	Springfield and Bloomington...	59	21.04 35 cents
18	Springfield and Bloomington...	59	34.15 58 cents
19	Bloomington and Girard.....	84	36.51 43 cents
20	Bloomington and Girard.....	84	32.74 39 cents
21	East St. Louis and Springfield..	96	66.26 69 cents
22	East St. Louis and Springfield..	96	59.61 62 cents
39	Alton and Jacksonville.....	67	32.05 48 cents
40	Alton and Jacksonville.....	67	32.96 49 cents
69	Roodhouse and Jacksonville...	21	17.22 82 cents
70	Roodhouse and Jacksonville...	21	14.88 71 cents

This statement shows that the majority of these trains earn considerably less than the average cost of operation, and they are trains which are carrying passengers at the highest rate per mile which we are now able to obtain under the law and against competition. The figures given are conclusive that not one of these trains could be operated on a basis of two cents per mile, and every one of them would have to be withdrawn.

A legal rate of two cents per mile involves an average rate of one and one-half or one and three-fourths cents per mile. I have already explained how through rates are made from

and to points east and west, and north and south of us, and that involves that we shall be unable to obtain two cents on business between our terminal points, which in turn involves that we shall have to grade our rates for many miles nearest to each terminal point to all other terminal points, and to several intermediate points. It also involves changes which the general public and the legislatures will hardly view with complacency. It will compel us to run fewer trains, and to employ fewer men. We will have to dispense with great numbers of trainmen, trackmen, and shopmen, and it appears impossible to see how we can avoid making reductions in wages, and what will follow that you can foresee quite as clearly as any other body

Now about through business: If we were not in this through business we could not afford to run the number of trains which we now run. The Chicago & Alton has high repute as a local line, and without indorsing all that is said about that, I may admit that we have a good local business, but if we depended upon that alone we would probably be compelled to run only one train in each direction daily, instead of the ample facilities in the way of transportation which we now give. It is the through business which enables us to maintain our position, pay fair wages, afford good train service, and make some returns to owners of the property.

In every other business except railroad business the buyer and seller stand on common ground and have equal rights. It is only when the railroad comes into the market that the buyer claims to have the right to dictate terms to the seller. Why this should be so is one of those things "which no fellow has ever found out." So far as the Chicago & Alton is concerned, the buyer would have been just as well off to-day if he had been left to deal with the seller, instead of having been embarrassed by legislation. I am not aware of any reduction in passenger rates on the Chicago & Alton which has been brought about by legislation. It came about naturally in the way of business through competition. Our rates have been forced down by competition and by the necessities which constrained us to seek

to increase traffic, and not by legislation. This is not an argument against legislation, but it is simply a statement of fact, and it shows how the natural course of business and of competition will bring about with the least friction a condition tolerably fair to the buyer, as well as to the seller; at any rate, not absolutely ruinous to the seller.

If you decide on a two-cent rate for any set of lines in Illinois, you will at the same time force a two-cent rate on all other lines in Illinois and compel reductions which will be forced over more lines than those in Illinois, and will be more far-reaching than we can see at the present time. If any line in Illinois has a two-cent rate, all other lines will be compelled to meet it, as they cannot compete to common points at three cents per mile against a line charging only two cents per mile. The idea that strong lines can have a two-cent rate and weak lines can charge three cents or more is fallacious. The weak line charging a high rate cannot carry a single passenger against a strong line charging a lower rate. Under such conditions the weak line would be destroyed, and the strong line would be scarcely able to exist, even by reducing the number of its trains and its employes and cutting down wages. I do not believe, as some do, that such legislation would make the strong stronger and the weak weaker. I believe that it would literally destroy the weak, and would make the strong weak.

I have had put in my hands a document entitled "Traveling Men's Views of the Two-cent Mileage Question." It is anonymous, and it is rather unusual to pay any attention to anything that is anonymous, but I would like to say something about it, because it is, in some respects, the most unique work of fiction which has appeared this season. The writer belongs to that large and increasing class who rush in where angels fear to tread. I do not wish to say anything offensive. Still, as nobody owns it, and as it is nobody's child, I presume that nobody will take offense. However, I will avoid, if I can, being unkind to this poor orphan whom nobody owns. I believe that the modest unknown author believes in what he says, although it is hard to believe that, and im-

possible to believe as he believes. It is rather shocking and depressing to read of his referring to "a turning towards prosperity" as a reason why the railroads should be deprived of the slightest result of that prosperity. It is appalling to think of a human being who takes this view of business affairs, and who is so entirely devoid of any sense of fair play. How would he like it if there were a turn in his affairs "towards prosperity" and that were made the reason that he was to be ruthlessly deprived of the results? But our eyes have not yet been gladdened with this "turning towards prosperity" about which he writes. On the contrary, our revenue has been decreasing and continues to decrease. From January 1 this year, to date the decrease in passenger earnings averages \$1,200 per day.

As to nominal rates, which some of the railroads with the best intentions and in a spirit of benevolence make to give a holiday once or twice a year to workmen and shopmen who can not afford to lose a day's wage, or to pay regular full rates, I have only to say that if this gentleman will guarantee ten such trains a week as we carry at these rates, we will agree to abolish all our trains and run only ten trains per week at nominal rates, and we will then make more money than we are now doing, or than we have ever made in the history of the Chicago & Alton Railroad. But as any person of the most ordinary capacity, and of the most ordinary common sense can understand, while we can run perhaps five or ten such trains a year for the working classes and get sufficient patronage for them, it would be a complete failure if we attempted to run one such train once a week. That is not a theory. We have had it in practice. For months, at one time, we tried a one-dollar rate for 487 miles, and found that it did not increase the number of our passengers.

Under favorable circumstances the gross earnings of a special low-rate train for the working class will bring in sometimes about \$5,000. That does not fall very far below the average daily passenger earnings of the road. When we know, as we do in such cases, exactly what accommodation

we have to provide, the arrangement is necessarily cheaper than when we provide regular trains, the requirements of which we have no means of knowing beforehand, and which may be half filled or quarter filled. The argument of this writer, respecting these low rates for the working classes, ignores altogether the fact that we have only two or three trains to provide in order to earn about \$5,000; whereas ordinarily we have seventy trains daily to provide in order to earn the same amount. I hardly need to press on your attention the fact that seventy trains cost us a trifle more than two or three trains. It may, however, not be so easy to penetrate the dense intellect of the writer of this leaflet with the difference between the cost of seventy trains and two or three trains.

As to wages: It will be sufficient answer to him to quote from page 7 of the latest report (1895) of the Railroad and Warehouse Commission of this State. The Commission give the following as the average wages per day paid by railroads in Illinois: Office clerks, \$2.07; station agents, \$1.96; other station men, \$1.56; enginemen, \$3.40; firemen, \$2.07; conductors, \$2.91; other trainmen, \$1.93; machinists, \$2.26; carpenters, \$1.98; shopmen, \$1.73; section foremen, \$1.70; other trackmen, \$1.29; switchmen, flagmen, and watchmen, \$1.77; telegraph operators and dispatchers, \$1.63; employes account floating equipment, \$1.55; other employes and laborers, \$1.63. The last schedule of wages that the Chicago & Alton made with engineers was at the highest rate which we have ever paid, and was so high that some lines were unable to pay it, and were compelled to take the chances of a strike with disastrous consequences, both to the railways and to the men. The Chicago & Alton paid in wages to engineers in 1896 \$266,533.35, being an increase of \$14,598.51 over wages paid to engineers in 1895.

It is true that steel rails do not cost so much to-day as they cost at the time of the war and for some years thereafter, but we are paying quite as much for them to-day as we have paid for many years past. Then it is ignored by this writer,

who calmly shuts his eyes to the facts, that with our extended lines we are using at least twice the number of steel rails that we used twenty-five years ago, and consequently we are paying very much more in the aggregate for steel rails than we paid then. It is a very small road indeed that can get along with less than \$500,000 per annum for steel rails, ties, and other cost of maintenance of track.

As to the price of engines: He appears to know all, and a great deal more about that than any railroad man. All that I know is that the average price of an engine of any use whatever, and that we care to buy, is \$10,000, and we are using to-day over twice as many engines as we used twenty-six years ago. We began 1871 with 108 engines; in 1896 we had in use 240 engines. This anonymous writer does not appear to have any conception that the purchase price of engines does not end the expense connected with them. He does not appear to know or care to know, or to admit it if he does know, that engines are subject to accident, decay, etc., and we have to pay the doctors. Last year (1896) we paid \$267,262.23 for repairs to engines. We have to keep engines alive after we buy them, and we have to pay to do that. It can hardly be necessary for me to go on with this.

But why this crusade of traveling men? They do not pay fares; the wholesale houses which employ them pay their fares. They have no interest whatever in this question. They care no more for the people of Illinois having a two-cent rate than they care for the people of Timbuctoo having such a rate. They have some object in view which possibly you can understand easier than I can, but that object is not to get a two-cent rate; it is to achieve something else, and they are simply using the Legislature for a whip to scourge the railroads into line for a purpose of their own and not to help the people of this State.* The wholesale houses which pay their

* The following amendment was in the hands of a committee of traveling men who were present in the committee room for the purpose of presenting it to the committee, but it was temporarily withheld, doubtless because it would have served at that juncture as "confirmation strong as

fares are not behind them. They are not urging this bill. They care nothing whatever about it, and could not be induced to lift their little fingers to obtain its passage.

Just before coming here I had another document handed me, entitled "Facts and Figures from the Standpoint of the Jobbers, Manufacturers, Commercial Travelers, and Grangers of Illinois." The writer adduces no authority for his representing so large a number of clients as he claims in his title, and we may therefore safely assume that if he represents anybody except himself, that he does not represent more than the Travelers' Protective Association, of which, in his title, he claims to be a "representative." At any rate, there appears to be nobody here in defense of this bill except traveling men. They initiated, and they alone continue, the agitation respecting it.

This is a weary document, gentlemen, filled with half truths, which are more mischievous than untruths. It is chiefly devoted to proving that the railroads are responsible for having an average rate of two cents, instead of a legal rate of three cents. It assumes that the railroads would rather have two cents per mile than three cents. In that respect it is peculiarly humorous. We are no more responsible for our average rate of two cents than you are and have no more control over it than this writer has, or than you have. The geographical position of a railroad has something to do with the proportion which it obtains on through traffic. All roads to the same common point are not of the same length, and the long road has to accept the same rate, or proportion of a through rate, to which the short line is entitled. It comes about in that way that the majority of railroads have to accept on through business very much less than the legal rate. It may be said that we should go out of the through business, but if we do that, we will be compelled to abolish three-fourths of the trains which

holy writ" of the statement made above as to the real object traveling men have in view. It has since been presented:

"Provided, that the above shall not affect any road in the State of Illinois which shall issue and sell 1,000-mile books, unlimited, upon the payment of \$20.00."

we are now running, and to discharge a small army of employes, and that would not benefit anybody. We need the money which we receive from through business to enable us to maintain our present service.

The writer objects to commutation rates. I need not occupy your time with a defense of commutation rates from and to the suburbs of great cities. Commuters number by hundreds of thousands; commercial travelers number by hundreds and are a mere fraction as compared with the immense multitude of commuters who will rise up in judgment against them on this question. The writer not only objects to commutation rates, but also to half rates for ministers, charity, nuns, and sisters of charity, and to reduced rates for annual and other large gatherings of Knights of Pythias, Knights Templar, Societies of Christian Endeavor, National Educational Association, Odd Fellows, etc. I have nothing to say to all this, except that it has been provided by State law and by Federal law that we can make these rates. It is for you to say if you are going to stand by these millions of commuters and others, including members of the societies I have named, or the fraction of traveling men who object, not because they wish a general two-cent rate, but because they wish to use this agitation selfishly to get something for themselves exclusively. They are an insignificant minority compared with the millions of railway men, commuters, and members of societies, secret or other, against whom they wage selfish warfare for special legislation for themselves. The writer insists that rates should be uniform and permanent. I am rather in favor of that myself, but unfortunately for me and for these traveling men, that question has been decided by a "bigger man" than I am, or than any traveling man. The Supreme Court has decided that we can say to-day what our rates are, but that we will be in contempt of law and liable for the same if we agree to maintain these rates for any stated time. I am a law-abiding citizen, gentlemen, and when Congress or the Legislature of Illinois enact, or the Supreme Court decides, I submit. I leave it to traveling

men, or to anybody else who cares to do so, to traverse the decisions of the Supreme Court and fight the National Government and State governments.

When railroad rates have been under consideration by disinterested, practical men familiar with the question and having a knowledge of railroad affairs, their decision has always been in favor of the maintenance of rates. The Interstate Commerce Commission and the boards of railroad commissioners of the several State governments, when this question has been before them, have either let it severely alone or have reported in favor of leaving the rates undisturbed. On this your attention is requested to what the Railroad and Warehouse Commission of Illinois have to say on page 8 of their last report (1895). After giving particulars of railroad statistics, the Commission add:

"A careful consideration of the above facts will convince one that the railway system of Illinois is in the main conducted with economy and great skill, and is of vast benefit to the citizens of the State, that it does not earn excessive dividends on the immense capital invested, and we can not conceive of anything which would be so disastrous to the people of the State as the destruction or impairment of the roads comprising this great system. Were such conditions brought about from any cause, the effect would be to prostrate business, factories would be closed, and the wheels of industry would no longer revolve; land values and the prices of farm products would depreciate, and the chief business interests of the State would be bankrupted."

Railroads, instead of being harassed, embarrassed, and oppressed, should be welcomed, encouraged, and protected. They have not committed any crime against the sovereign people. On the contrary, they have been chief agents in the development, progress, and prosperity of the country. Wherever they run, they have largely increased the value of every farm, and every city, town, and village lot. Almost beyond computation, they have cheapened transportation of every kind. Food is cheaper because of them. What were luxur-

ies, and inaccessible, or too costly years ago, are common food to-day, through the instrumentality of the railroads. They bring to every Illinois home the luxurious fruit and food of the South and West at prices within the reach of all. To the railroads you owe it that you are paying only two cents letter postage to-day, instead of twenty-five cents or more, as in days not very long gone by. They have made it possible to transmit with rapidity; certainty, and safety, the enormous quantities of newspapers and express packages for which formerly there were no facilities for transmission. Through them the farmer has access to markets that were beforetime inaccessible to him. For him they have increased the value of every bushel of grain and every product of the soil. They have brought together and bound in one this country, which but for them might have hung together a little more loosely and dangerously, if even it had not had the misfortune to fall apart, which would have been the blackest fatality that has ever overtaken civilization.

Gentlemen, I have talked at greater length than I intended, and I am afraid that I have tired you and detained you too long. I have to thank you for your forbearance and the courtesy and attention with which you have listened to me.

The Railways of Illinois.

BY DWIGHT C. MORGAN.

In making some investigations into railway rates and railway earnings in the State of Illinois, with especial reference to bills now pending in the State Legislature, I have prepared some diagrams which may be of interest to the readers of *The Railway Age*. These diagrams show in a graphical manner the railroad conditions in Illinois for the past 25 years, on the following items:

1. Yearly increase in the mileage of Illinois roads.
2. Population in Illinois per 100 square miles of territory.
3. Population in Illinois per mile of railroad in operation.
4. Gross earnings and income for all railroads in Illinois.
5. Gross earnings and income per mile of railroad in Illinois.
6. Operating expenses (exclusive of taxes and fixed charges).
7. Maximum passenger rates allowed in Illinois Railroad and Warehouse Commissioners' schedules.
8. Average passenger rates per mile in Illinois.
9. Average freight revenue per ton per mile in Illinois.

With an area of 56,000 square miles, the population of the State of Illinois, per 100 square miles of territory, has increased as shown in Table 1 as follows:

1870—Population per 100 square miles.....	4,530
1880—Population per 100 square miles.....	5,496
1890—Population per 100 square miles.....	6,832
1896—Population per 100 square miles (estimated)....	7,792

During this same period of time the liberal inducements held out to promoters to railway enterprises have resulted

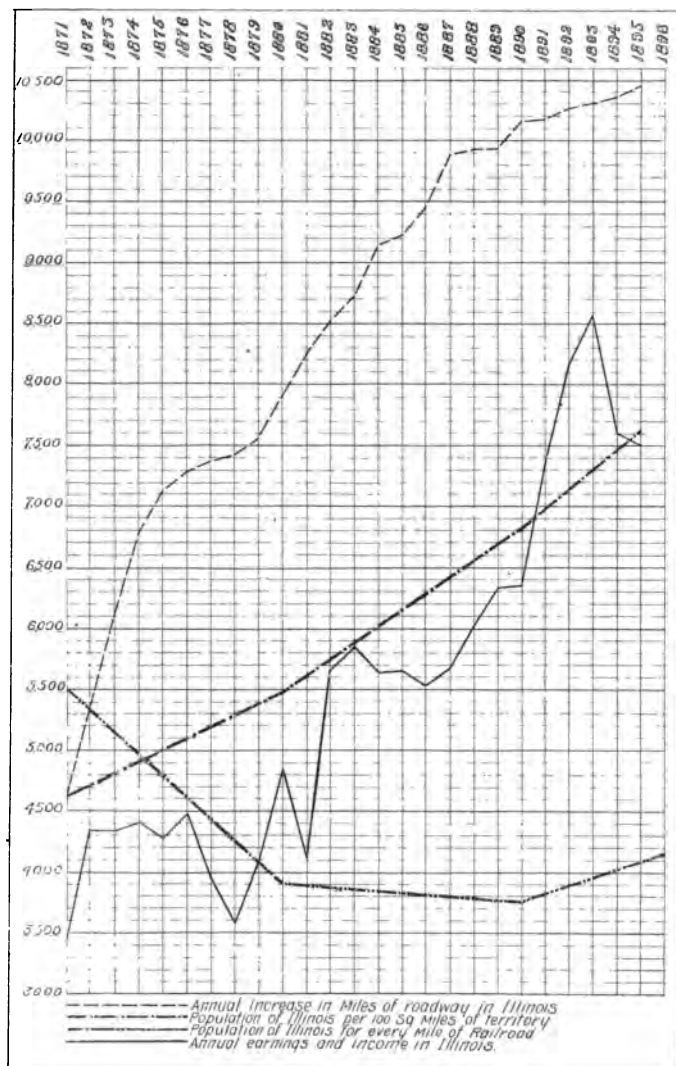


FIG. I. THE RAILWAYS OF ILLINOIS.

[In the marginal figures to the left a different unit is used with each line. Thus, taking the marginal figures 6,000 In "miles of roadway" this indicates 6,000 miles of line. In "population per square mile" it indicates 6,000 persons. In "population per mile of line" it indicates 600 persons. In "earnings and income" it indicates \$6,000,000.—Eds.]

in the granting of over 400 franchises for lines of road. Many of these proposed lines were never built, but enough were constructed to increase the length of roads from 4,635 miles in 1871 to 10,471 miles in 1895, averaging about 233 miles for each year.

The growth in population, though rapid, has not been sufficient to maintain the same ratio between miles of railroad and population per mile of road, as shown by Table I and represented in figures as follows:

1870—Population per mile of road.....	569
1880—Population per mile of road.....	388
1890—Population per mile of road.....	376
1896—Population per mile of road (estimated).....	416

This table shows that to-day there are less people in Illinois per mile of railroad than there were in 1871.

Comparing the earnings and income of Illinois railroads with the growth in population, it shows that, in general, the increased revenues of the roads has not been disproportionate to the increase in the population of the State. The extensive construction of railroads in Illinois, while largely instrumental in developing unsettled and unimproved portions of the State, has not enabled the creating of traffic and revenues in excess of that produced by the natural growth of the State, but has merely divided the gradually increasing business among a greater number of railroad companies.

It is impossible to estimate the value that the State has derived from the development of its avenues of commerce. The effect cannot be better expressed than it was in the early history of Illinois, when one of her great lawyers, in referring to the construction of railroads, said: "It will make the interior counties, cause them to settle, raise the values of their lands (which are intrinsically as good as any), and furnish the means of transportation to markets of which they are now destitute."

The complete railway facilities furnished to nearly every community in the State, can be readily seen from the fact that to-day about 89 per cent. of all the lands in Illinois are

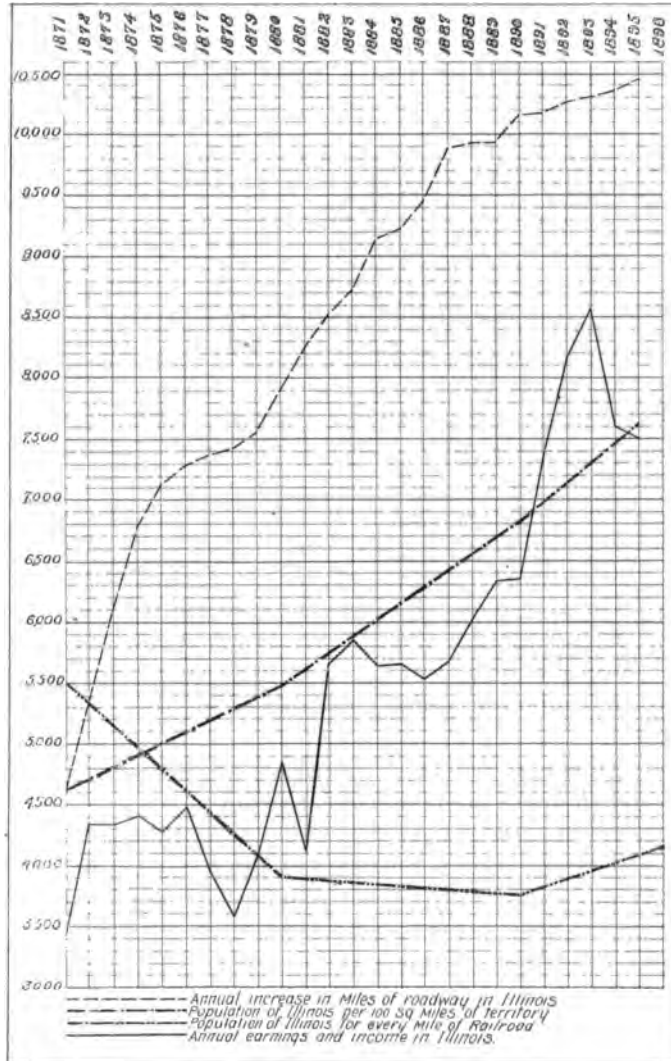


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The complete railway facilities furnished to nearly every community in the State, can be readily seen from the fact that to-day about 89 per cent. of all the lands in Illinois are

within 5 miles of a railway in actual operation, 8 per cent. between 5 and 10 miles, 2 per cent. between 10 and 15 miles and 1 per cent. between 15 and 20 miles.

Railroads are creatures of law, they cannot be built unless

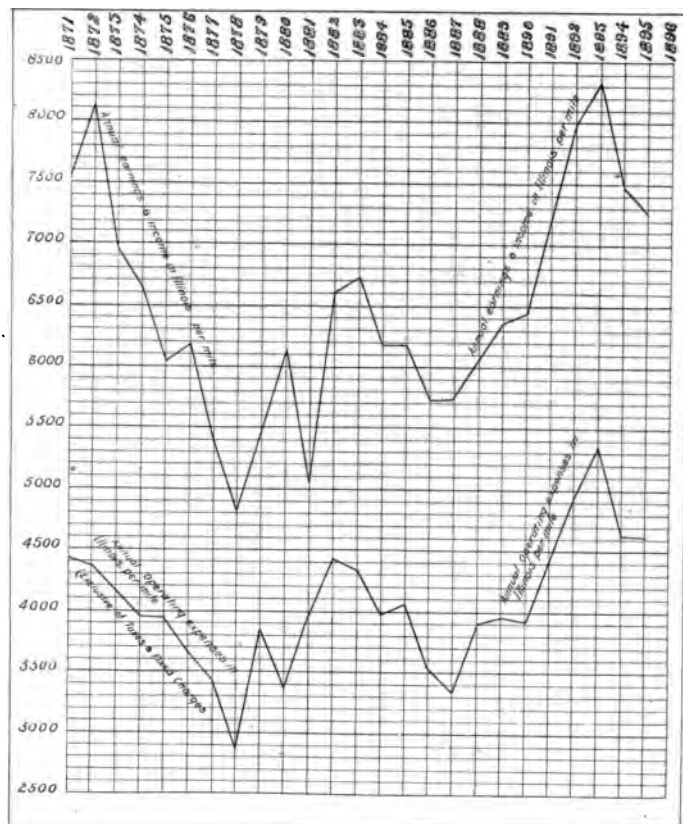


FIG. 2. THE RAILWAYS OF ILLINOIS.

the State delegates to its promoters the highest authority it possesses over property, the right of eminent domain. But in the transaction of their business, they are, as are many other important enterprises, subject to all of the natural conditions incident to the conducting of their affairs, and also

to those of a created or legislative nature. If, from any one of the many causes affecting the earnings of railways, they show fluctuations from year to year, it cannot be said that it is entirely due to the amount of volume of traffic carried upon their lines—to accept this as a basis would be to entirely ignore the fact that tariffs have not been uniformly maintained, though at no time have they exceeded the maximum rates prescribed by law.

For 25 years the variations in the gross earnings and income per mile can be readily seen from an examination of Table 2, in which the abnormal conditions incident to the Columbian Exposition are very plain, and yet they had advanced but a trifle above the earnings per mile for 1872. It will be seen how closely the course of operating expenses has followed the course of earnings and income; from which it is apparent that when it has been necessary, certain economies, without reduction in the general character of the service rendered to the public, and without affecting the wages of the employes, can be practiced temporarily but not permanently. For example, the expenses of the maintenance of motive power, rolling stock, roadway, etc., may be reduced for a few months at a time, and often economies in these departments are practiced, but the ultimate result of such a policy has necessitated still greater expenditures in succeeding years in order to restore the general standard of maintenance to its former condition.

The important deduction, however, that is to be drawn from this table, is found in the great similarity in the course of operating expenses to that of gross earnings. While the relation of the one to the other would naturally produce similar courses, yet the very close relation shown in the table indicates the uniform pressure that has been felt by transportation companies, and how immediately in touch with the business conditions have the managers of the railroads had to be in order to protect the properties they represent. Yet as watchful as this table indicates them to have been, comparatively few roads have escaped the courts and receiver-

ships. It cannot be said that the exercise of the authority of the State in fixing maximum rates has by itself produced the insolvency of any Illinois railroad; but to the general law, which authorizes the unrestrained construction of railways without regard to their public necessity, combined with excessive competition and low interstate rates, this pressure must be attributed. These things together have chiefly contributed to the failures and caused the low rate of interest

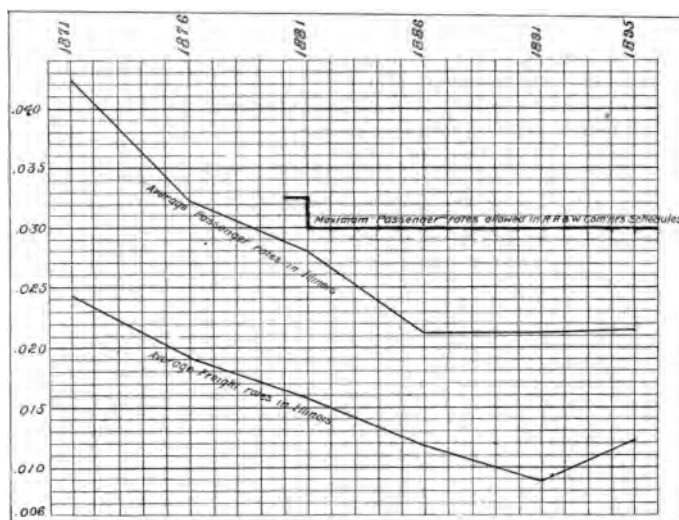


FIG. 3. THE RAILWAYS OF ILLINOIS.

that the railways of the State have been able to earn on the cost of the properties.

The question is raised whether with the very considerable reduction in the value of products, materials, supplies, etc., and the increase in the volume of business done by the roads, there has been a corresponding and proportionate decrease in the rates charged for the transportation of persons and property?

It may be seen from Table 3 what change in passenger and freight rates has actually taken place since 1871.

In 1871 the average revenue in Illinois for the transportation of all classes of freight per ton per mile was 2.43 cents. In 1895 the average revenue was 1.23 cents. The average freight revenue in Illinois has therefore been reduced 49.4 per cent. since 1871.

The year 1895, as compared with 1891, shows an increase in the revenue per ton per mile. This is not due so much to an appreciable increase in the rates actually charged, as to the character of the commodities carried during the respective years. The revenue per ton per mile was in a measurable degree increased in 1895 by reason of the shipment of a smaller proportion of low-class and a larger proportion of high-class commodities.

In 1871 the passenger rates in effect in Illinois were from $3\frac{1}{2}$ cents to 6 cents per mile, averaging for all roads about 4.25 cents. In 1895 the passenger rates were from $1\frac{1}{2}$ to 3 cents per mile, averaging for all roads 2.26 cents per mile.

Comparing the volume of passenger traffic, the average distance hauled and the average rates charged—as deduced from the sworn reports filed with the Commission—it shows that in 1871 the railroads of Illinois carried per mile only about one-third the number of passengers carried to-day, but that in the conduct of their business the average distance hauled was 50 per cent. further, and a comparison of the average rates charged per mile shows a reduction since 1871 of 46.8 per cent.

What reduction has taken place in the prices of commodities? From the comprehensive data compiled by the Committee on Finance and submitted to the United States Senate in March, 1893, bearing upon wholesale prices, wages and transportation, in the United States at large, the report shows that, from 1873 to 1891, there was an average reduction in nine principal agricultural products, including meat, corn, wheat, cotton, oats, barley, rye, hemp, and tobacco, of 7.2 per cent., food 12.3 per cent., clothing 28.9 per cent.

Two hundred and twenty-three other articles affecting the average consumer show a reduction of 17.5 per cent. Taking

these facts into consideration, and the average railroad rates in effect in Illinois to-day, and it is apparent that rates have followed the general reduction in prices of commodities.

During the same period of time the average wages paid for 543 occupations advanced 14.4 per cent.

The low average rates in effect in Illinois to-day for the transportation of persons and property, as compared with 1871, show how prodigious have been the results to the people of the State, amounting in the aggregate to a saving of several hundred million dollars.

As a general rule, it will be found that the lowest rates in effect in Illinois are upon lines having the largest traffic, but to apply the low rates charged on some lines, or by combining the rates charged on all the roads in the State, and accepting the average rate thus deduced for the maximum, would, to many of the companies, without doubt, result in their insolvency.

For this reason, in the revisions that have been made in their schedules, the Railroad and Warehouse Commissioners have not seen fit to establish for a maximum, rates as low as those in effect on some of the lines or as low as the average for all the roads. In this, they have recognized the facts: first, that the amount of business done by the respective roads is not uniformly distributed; second, that competition has in some instances reduced charges disproportionately; and third, that the cost of the service to the respective roads is not the same. In establishing reasonable maximum rates, to apply with justice, they must be sufficiently high to provide for these varying conditions.

If from any one of the natural causes affecting the earnings of railways they are decreased, the question arises, how do the companies adjust themselves to such conditions? The simple answer is—by reducing expenses.

Natural causes affecting the earnings are generally not enduring in effect, though complete recovery is often slow, and through temporary economies, in the nature of those already referred to, relief is afforded until a return of favor-

able conditions. But when the State steps in, either by direct legislation or through its authorized agents having jurisdiction, and prescribes any considerable reduction in the maximum freight or passenger rates, it at once changes the conditions, necessitating and compelling economies that must be permanent in effect. Expenses are then reduced (1) by lowering the character of the service rendered to the public; (2) by permitting dangerous conditions in roadway structures and equipment to arise and continue unremedied, and (3) by reducing the wages of employes.

The people of the State of Illinois are to-day receiving better service than ever before; and so long as fair rates are permitted the public cannot be wrong in demanding good service, nor can it be wrong in demanding safe transportation. And it is reasonable to assume that so long as fair rates are permitted to be charged, the wages of railroad employes will not be affected differently and disproportionately to the wages paid for other occupations.

An Argument on the Two-Cent Fare Bill.*

BY W. C. BROWN.

Mr. Chairman and Gentlemen:—I desire to preface my remarks this evening by acknowledging for myself and for the roads I have the honor to represent, the deep sense of obligation felt for the opportunity to be heard upon the important subject which is to be considered at this time.

In the consideration and discussion of any subject upon which men differ, it is of prime importance that all prejudice be eliminated, and that each party to the discussion accord the other credit for sincerity, fairness and good faith.

The statistics I shall submit have been selected from the best authorities available. The comparisons I shall make will be fair ones, representing not that which is most favorable to the railroad side of the question, but in so far as I have been able to judge, representing only a fair average.

The expressions of opinion which must of necessity enter into an argument of this nature to some extent, are made carefully and conscientiously and are based upon an experience upon western railroads of something more than twenty-four years.

While the question of the enactment of a law fixing two cents per mile as a maximum charge for the carrying of passengers has for several years and in several States been the subject of discussion, no such law has been passed by any State, and if Missouri shall enact a law of this character at this session of her General Assembly, she will be a pioneer in this class of legislation.

I am aware that the impression exists that such a law is

*Though this address was made in 1893, it is included in this volume as containing figures and arguments of permanent value.—Ed.

effective in New York and in Michigan, and desire briefly to explain the foundation for this impression.

The statutes of New York permit generally a rate of three cents per mile, but on many roads through the more sparsely settled portions of the State, a much higher rate is authorized.

The only exception to the rate of three cents or higher, is the New York Central & Hudson River road, and this rate applies only to passengers on one part of the road, viz.: to that part of the road between Buffalo and Albany.

The statutes limit the fare from any intermediate station to Albany, or from any intermediate station to Buffalo, or from any intermediate station to any other intermediate station between Buffalo and Albany, to two cents per mile.

This rate does not apply from Buffalo station to Albany, or to any station on the same road in the State of New York, beyond Albany. This rate was fixed something more than forty years ago, and was in consideration of the fact that the Consolidated road paralleled the Erie Canal, then a favorite State institution, from which the State received tolls on all freight traffic.

The State saw in the competition of the railroad the certain loss of this revenue, and sought to recoup this loss in this way.

In addition to this feature, the State for some years after the completion and consolidation of the original lines which now compose the New York Central & Hudson River Railroad, required that road to pay to the State the same tolls on freight that were paid on freight carried on the canal.

It has been claimed that Michigan has a general two-cent rate, and this claim is urged as an argument in favor of the enactment of a similar law in other States.

This claim has but little more foundation in fact than the similar one touching the State of New York.

Michigan has a graded law, passenger rates being fixed according to the earnings per mile of road for carrying passengers.



FIG. 1. THE RAILWAYS OF ILLINOIS.

[In the marginal figures to the left a different unit is used with each line. Thus, taking the marginal figures 6,000. In "miles of roadway" this indicates 6,000 miles of line. In "population per square mile" it indicates 6,000 persons. In "population per mile of line" it indicates 600 persons. In "earnings and income" it indicates \$6,000,000. —Eds.]

lands, 3.26, 2.61 and 1.63, while in Belgium the rates are 2.32, 1.74 and 1.16; but no citizen of Missouri or any other State in this country would put up with the accommodations of the lower class in foreign countries.

The population to the square mile in Missouri is about thirty-nine. The population to the square mile in England is 541; of Belgium, 514; Netherlands, 350; Italy, 268, and of France, 187.

Excepting England, no baggage is carried free, while in this country 150 pounds of baggage is carried free for each passenger.

The question of the cost per mile of carrying passengers is an exceedingly complex one, which no railroad expert can answer with absolute correctness. The cost depends largely upon the average number of passengers carried on each train, but is governed to a great extent by circumstances and conditions.

Serious accidents, involving loss of life and personal injury to passengers, may largely swell the expense of conducting this branch of the service.

Among other statistics prepared and submitted by the Interstate Commerce Commission in their report for the year ending June 30, 1890, pages 598 to 703 inclusive, will be found tables giving in connection with other information the cost, as nearly as it can be determined, of carrying each passenger per mile on the railroads of the United States.

I have selected a number of roads, which from their location, character and volume of business, etc., seems to offer a fair basis for comparison.

Chicago, St. Louis & Pittsburg.....	2.277
Mobile & Ohio.....	2.943
Cleveland, Cincinnati, Chicago & St. Louis.....	2.028
Richmond & Danville.....	2.068
Illinois Central.....	2.006
Atchison, Topeka & Santa Fe.....	2.710
Burlington, Cedar Rapids & Northern.....	2.643
Chicago, Burlington & Quincy.....	2.157

Chicago, Rock Island & Pacific.....	2.243
Wabash.....	2.097
St. Louis & San Francisco.....	2.047
Missouri, Kansas & Texas.....	2.218
Missouri Pacific.....	2.246
Louisville, Evansville & St. Louis.....	2.114
Louisville, New Albany & Chicago.....	2.141
Chicago, St. Paul, Minneapolis & Omaha.....	2.553
Chicago, Milwaukee & St. Paul.....	2.058
Hannibal & St. Joseph.....	2.093
St. Louis, Keokuk & Northwestern.....	3.289
Philadelphia & Reading.....	2.211
Chicago & Atlantic.....	1.972
Michigan Central.....	1.859
Dunkirk, Allegheny & Pittsburg.....	2.792
Ohio & Mississippi.....	1.828
Pittsburg, Cincinnati & St. Louis.....	2.102

The figures given are, as stated, taken from the report of the Interstate Commerce Commission, the highest authority upon questions of this character, and are the result of years of careful investigation by that commission.

It would seem that these figures should settle the question. If any figures upon this question are entitled to weight and consideration at your hands, certainly these are.

It cannot certainly be the intention or desire of the Legislature of this State to compel the railroads to transact their passenger business at a loss. It has been urged by advocates of this measure that the reduction in rates will result in largely increasing the passenger business of the railroads.

That under the lower rate and on account of it enough more people will travel to compensate for the reduction in rates.

In order to produce this result, the volume of passenger business must be increased 33 per cent.

Do any of the gentlemen who have given this question the careful consideration its importance merits believe this result will obtain?

Will the farmer leave his work and take a trip on the railroad simply because his fare will cost him two instead of three cents per mile? Will the mechanic leave his bench, or the merchant his store, to ride more frequently or for a longer distance, because the rate had been reduced as provided in this bill?

The average distance traveled by each passenger carried on Missouri railroads in the year 1890 was 41.7 miles; the average amount paid by each passenger during the same year was \$1.03.

The saving to any citizen of Missouri by this bill will be so small that it is highly improbable that it will result in any increase in the volume of business whatever. The reply to the argument that the reduction in fare will result in largely increasing the business must be to a great extent simply an expression of opinion, and it is the opinion of those who, by reason of long experience and great familiarity with the business are best qualified to judge that it would have no such result.

It is true that cheap rates temporarily stimulate business for a special train, or a single day, or a short period, and for the time influence people to travel more. The fact should not be lost sight of, however, that almost invariably the low rate has coupled with it some special attraction which serves to induce people to make a trip which the reduced fare of itself would not do. If the rates were continuous, and no special attraction offered, the business would soon drop to its normal volume.

The enactment of the law in Michigan resulted in three roads reducing their fare to two cents. On each of these roads the result was a loss in passenger earnings. On one road the number of passengers carried was increased 6 per cent., but the passenger earnings showed a decrease of 12 per cent.

In Wisconsin, when the Potter law was enacted and rates reduced one cent per mile, the result was watched closely. It was found that no perceptible increase in passenger travel resulted—the reduction of rates had but one effect—that of

reducing the revenue of the roads without increasing the volume of business at all.

If it were probable that the reduction proposed would result in increasing the passenger revenue of the roads, it would be made voluntarily, but all experience proves the theory to be fallacious.

During the year 1891 the number of passengers carried per mile of road in New England was 16,197. In New York, New Jersey, Pennsylvania, Delaware and Maryland the passengers per mile of road were 11,200. In Ohio, Indiana, Michigan, Illinois and Wisconsin the passengers per mile of road were 2,060. During the same year the passengers carried per mile of road in Missouri were 1,342.

Can there be any stronger argument presented against this bill than the fact that it will, if it shall become a law, compel the railroads of Missouri to carry passengers at a less rate than obtains in States where the volume of business is from 100 to 1,500 per cent. greater than in our own State? The Railroad Commission of Michigan, speaking of the graded fare in that State which has been referred to, says:

"Should the courts finally affirm the constitutionality of the law, its enforcement may have the effect expected by its framers, and result in a general reduction of passenger fares to two cents per mile on all the principal lines in the State.

"What the effect of such an outcome would be on the financial condition of the companies is problematical.

"While it is not impossible that the older and stronger companies might, without serious impairment of income, be limited to a two-cent rate, it can scarcely be doubted that such a reduction would work great hardships upon the newer and local lines, and reduce their earnings to a sum insufficient to pay fixed charges, and, in some cases, perhaps, even running expenses. In my judgment it is of the highest importance that, in legislation upon this subject, the efficient maintenance of the property should not be lost sight of. Any policy that would compel the companies to permit their plants to retrograde from their present desirable condition would be a mistaken one.

"Our people are as much interested in having safe and speedy transportation as they are in having it cheap."

The number of passengers carried per mile of road in Michigan is 2,060, as compared with 1,342 in Missouri.

The Railroad Commissioner of Ohio, in his report for 1890, referring to proposed legislation reducing passenger fare to two cents per mile, says:

"A careful examination of the sworn reports of the various companies conclusively shows that the roads, especially in the southern portion of the State, run their passenger trains at a loss, even under the present rate, while other roads, where traffic is more extensive, can and do carry their passengers at a rate lower than the statute permits. No general reduction could be made that would be equitable and just to all roads."

A committee appointed by the Senate of Ohio to investigate this subject, said in their report:

"Your committee are of the opinion that the information before us, obtained from numerous roads, under different circumstances with experience of many years, and from testimony of practical railroad managers and employes, from a careful investigation of the business of the different roads, as shown by their sworn reports, and taking into consideration the cost of maintaining the roads in all their departments, with the requirements of the traveling public for the best equipment, fast time, immunity from accidents, close connections and consequent competition for business, warrants the recommendation that a uniform reduction of rate of fare to two cents per mile would not be just and equitable."

The railroads of Ohio carried in the year 1891 2,132 passengers per mile of road, while the railroads of Missouri carried but 1,342. These expressions of opinion are conclusions reached by public officers bound by official oaths, surrounded by facts and after having made careful investigation of the question under consideration.

These conclusions are in line with the result of similar investigations made in many States, and it seems to me that a fair and impartial investigation of the subject, an earnest,

conscientious searching for the truth can produce no other result.

This measure proposes to fix the maximum passenger rate in Missouri at a lower rate than obtains generally in any other State in the Union, or in any country in the world.

It is true the New York Central & Hudson River Railroad between Buffalo and Albany is required to carry passengers at a statutory rate of two cents per mile.

The population to the square mile of the counties through which the New York Central & Hudson River Railroad runs, by the census of 1890, was 267; the population to the square mile of Missouri was a fraction less than 39.

The number of passengers carried per annum per mile of road by the New York Central was 9,564. The number carried by Missouri roads for the same period was 1,342.

The New York Central is a trunk line with four great trunk line roads extending from the city of Chicago to the city of Buffalo, each contributing to the immense volume of passenger business the former road enjoys.

The volume of passenger traffic of the New York Central is more than seven times greater than is enjoyed by the railroads of Missouri. The road has four tracks, is practically a water-level line, and can do its business at a minimized cost.

Manifestly a rate which might be remunerative to that road with its vast business might, and unquestionably would, be a ruinously low rate for the railroads of Missouri with their lighter traffic and traversing as they do a comparatively sparsely settled country.

I have called your attention to statistics taken from the last report of the Interstate Commerce Commission.

These statistics are valuable and interesting because they are the result of careful investigations made by officers representing the Government, and they are at once the highest and only authority to which we can refer touching the great question of railroad transportation.

I desire briefly to refer to one more quotation from this report.

On page 71 will be found a table giving for every railroad in the United States the following information: First, the revenue per passenger per mile; second, the average cost of carrying each passenger per mile; third, the difference between revenue received and cost per passenger per mile; fourth, the revenue per train mile from passenger trains; fifth, the average cost of running a passenger train per mile; sixth, the difference between the revenue received and the cost per train mile of running a passenger train.

For convenience sake, the railroads of the country are divided by the Commission into territorial groups. These divisions are based upon density of population, topography of the country, amount and character of competition, etc.

That part of the State of Missouri which lies north of the Missouri River is in group six, which also includes the States of Illinois, Wisconsin, Iowa, Minnesota and that portion of the Dakotas lying east of the Missouri River. The portion of Missouri which lies south of the river, with the States of Kansas, Arkansas, Indian Territory, Colorado and Oklahoma, comprise group number eight.

On all the railroads included in group number six the average revenue per passenger per mile is 2.226; the average cost of carrying each passenger per mile is 2.071 cents, the difference between revenue and cost being .155 of one cent per mile.

The revenue per train mile, which includes revenue from express, mail, news companies, etc., is 96.223; the cost per train mile, 72.886; the difference between the revenue and cost, 23.337.

On the roads in group eight, which includes all of Missouri south of the Missouri River, the figures are as follows:

Average revenue per passenger per mile, 2.268; average cost per passenger per mile, 2.294; difference between revenue and cost per passenger per mile, .026 net loss.

Revenue per train mile, 98.910; average cost of running passenger train per train mile, 80.466; difference between revenue and cost per passenger train mile, 18.444.

It will be seen that while in some States included in groups six and eight no maximum rate is fixed, and in no State is it less than three cents a mile. The average rate collected is as follows:

On roads included in group six, 2.226, and on roads comprised in group eight, 2.268. This is due to the fact that mileage books good for 1,000 or 2,000 miles sold at from two to two and one-half cents per mile, and commutation and excursion tickets sold at from one and one-half to two and one-half cents form a considerable part of the annual ticket sales of a railroad.

The fact that some tickets are sold at such reduced rates may suggest the inquiry, Why is it done, and whether or not it is a legitimate transaction? Why do railroads charge three cents to some and a less rate to others? The reduced rates are always (while they exist) open to all. The sale of mileage books is open to any person whose business or pleasure requires sufficient travel on the railroad to justify the investment of the necessary amount in a mileage book.

The sale of this class of transportation is the application of the wholesale principle to the passenger traffic of the railroad.

In all ages and among all people since barter and trade begun this principle has been recognized.

It has the sanction of the highest legislative and judicial authority in this and in all other countries as applied to railway passenger traffic.

It will be observed from the figures submitted that the revenue per passenger per mile received by railroads in group number six exceeds the cost of performing the service by the slender margin of .155 of one cent per mile, while the roads included in class eight receive from each passenger per mile .026 of one cent less than the cost of the transaction. Were it not for the revenue received for carrying express and mail the passenger business would have to be done at a net loss, discontinued or the average earnings per mile increased by increasing the rate.

These facts furnished by the Interstate Commerce Commission, collected, verified and compiled by officers of the Government, speak more eloquently and more forcibly than it is possible for any man to speak, and they form the strongest possible argument against the proposed measure.

While it is a fact that the passenger earnings on many roads in Missouri do not in and of themselves pay the cost of running the trains, it is also true that on many branch roads trains are run where the entire revenue from all sources is not sufficient to pay the cost of running the train.

These trains are run purely as an accommodation to the people who reside in the villages located along these branches, and the deficit is made up from some other branch of the service.

If this bill still further reducing our revenues from these trains shall become a law, it will make the burden heavier than can be borne, and the result will be a discontinuance of many such trains.

The desire expressed by our patrons more frequently than any other is for additional trains, faster trains and better service rather than cheap rates.

On account of better railroad facilities the morning dailies published in Chicago reach points on the Hannibal & St Joseph Railroad in Missouri several hours ahead of the great dailies published in St. Louis.

Negotiations are now in progress looking to the inauguration of a fast mail service from St. Louis on the St. Louis, Keokuk & Northwestern Railroad, which will not only put the St. Louis papers on parity with those published in Chicago, but will deliver the "Republic" and "Globe-Democrat" to points in Southern Iowa considerably in advance of their Chicago competitors.

The revenue which this train will receive from handling the mail will fall far short of paying its running expenses. Fully one-half the revenue which this much needed train must earn if it is put on and maintained must come from passenger earnings.

The present cost of handling passengers on the St. Louis, Keokuk & Northwestern Railroad is a fraction more than three cents per mile.

If this bill should become a law it will not only stop all negotiations for additional trains, but will compel the discontinuance of trains now running on that road.

In point of physical condition and equipment Missouri railroads are far below the standard of excellence to be hoped for and to which they must attain in order to be first-class railroads. To bring these roads to their present condition has required the most careful management and most economical operation possible.

Permanent improvements which add to the value of the properties are dependent upon the earnings of the roads.

To impair the earning capacity of the railroads means the impairment of their physical condition and a reduction in the character of the service.

In the palmy days of the Roman Empire it was said that "all roads lead to Rome," and it may be said to-day that all Missouri railroads lead to the great city of St. Louis, of which every citizen of the State is justly proud. The marvelous growth of St. Louis during the past five years is but the reflection of a similar growth and development throughout the State.

The railroads centering at St. Louis are making a united and vigorous effort to make that city a great gateway through which the tide of trans-continental travel may flow as freely as it has for years through the city of Chicago.

In the advantages which will inure from this, the entire State will share.

Every passenger who passes through the State will be a witness wherever he goes to the wonderful natural advantages offered by Missouri to home-seekers from the Eastern States.

The cities of Kansas City and St. Joseph, located as they are on the western border of the State, will share in abundant measure in these benefits, for the tide of travel which flows in at St. Louis will pass out through these two cities.

In order to accomplish this result, the railways of Missouri which form links in the great trans-continental thoroughfares must be in shape to offer as good facilities and as attractive service as is offered by the northern lines.

Can we hope to be in position to do this if you gentlemen shall recommend and the General Assembly shall pass a law which will still further deplete our revenues?

Can you afford—can the State of Missouri afford—to place her railroads at this disadvantage as compared with competing roads in other States?

My argument thus far has been as a representative of a railroad, and while I am aware that I could not, if I would, disassociate myself entirely from that connection, I beg your indulgence for a few moments while I attempt to consider this proposition as a citizen of Missouri, interested with you in the growth and prosperity of the State.

Sharing with you in full measure your filial affection for her, your pride in her past, and that greater measure of hopeful anticipation which we have the right to cherish for her future, I ask you to remember that in twelve counties of our State the whistle of the locomotive (which is always and everywhere a harbinger of development and prosperity) has never been heard. Eight other counties have railroads just skirting their borders, affording meager and inadequate transportation facilities.

Missouri has natural advantages which will not only make her the peer of her sister States, but which will when fully developed make her a queen in that empire of States which forms the magnificent valley of the Mississippi and Missouri Rivers.

It is not enough that our hills and valleys are as fertile and productive as the richest of the great agricultural States of the West. It will not suffice that almost the entire State is underlaid with a wealth of coal and mineral which would insure the prosperity of the commonwealth had she no other resources. We must have capital to develop the latent wealth of field and mine.

The counties now without railroads must have transportation facilities. Existing railroads must not be permitted to retrograde, but must be brought up to a higher standard of excellence.

In order to attract more capital to Missouri, is it not essential that we deal fairly and justly with the capital already invested in the State?

The railroads of the State are at the same time the servants and the wards of the State. The State has a right to control and direct their management within her borders.

As representatives of the State the revenue-earning capacity of these roads is largely in your hands.

In justice to the vast interests involved this power should be exercised carefully, conservatively and wisely.

Hasty action may work irreparable injury to the railroads of the State, and no serious injury can come to them without corresponding injury to the varied interests of the State at large.

The right to regulate and control should carry with it the duty in all right and legitimate ways to protect the interests which the State controls.

One more thought and I am done. I have said to you that in order to maintain the railroads and to meet current obligations it has been necessary to resort to every possible economy.

I know that some of the measures of retrenchment have been carried beyond the line where true economy ends and false economy begins.

To continue them for a long period would result in seriously impairing the character and crippling the efficiency of some of the best railroads in the State.

If an arbitrary reduction in revenue is made by legislative action, it will, in my opinion, leave the road no alternative than to make a corresponding reduction in expenses by reducing the wages of employees.

This is, and should be, the last resort, but I say to you candidly that I do not know how the reduction in earnings could be met in any other way.

The nearly 30,000 employes of railroads in Missouri have a vital interest in this matter, and in the name of this silent and humble, but eminently worthy, constituency, I ask you to consider this important subject in all its bearings.

In conclusion, I beg you to weigh carefully and impartially all the evidence.

Remember that the railroads are an important and an inseparable part of the wealth of Missouri.

Believe me when I say to you that the railroads of our State are working as zealously and as intelligently through various agencies for the development and permanent prosperity of the State as any citizen or association of citizens in the State.

If you believe this, will you not concede that the railroads, as citizens, are entitled to the same measure of consideration, the same measure of protection, at your hands that you would expect for yourselves and your interests, and that you would accord any other citizen, or any other important interest?

Passenger Fares in Iowa.

I.

Odebolt, Iowa, Jan. 14, 1897.—To the Honorable Board of Railroad Commissioners, Des Moines, Iowa. Gentlemen:—I am interested with many others in the present discussion of a reduction of passenger fares in Iowa to two cents per mile and am anxious to obtain more information on the subject.

I would like to know what the average rate of fare now is in Iowa; what it costs the railroads to carry a passenger a mile; how we are to ascertain what would be fair to both sides and what the opinion of the commissioners is concerning the question.

Any information which you can furnish me on the subject will be heartily appreciated.

Yours respectfully,

W. W. FIELD,
President State Agricultural Society.

II.

W. W. Field, Esq., President Iowa State Agricultural Society, Odebolt, Iowa.—Dear Sir:—Your favor of the 14th ult. is received, and I am directed to say in reply that the questions suggested by you have recently been considered by the Board of Railroad and Warehouse Commissioners of the State of Illinois in response to an inquiry made by the State Grange of that State and their conclusion just announced is to the effect that it "would be unwise, unwarranted and unjust to the railroad interests of the State to comply with this request." In their report they say:

"Some of the great trunk lines in Illinois might be able to stand such a reduction, yet the smaller roads and those

which do almost wholly a local business, and which are now and have been for the last two years struggling for existence, would be most seriously affected by it. Such action on our part would simply increase the heavy burdens under which they are staggering now. It is a well-known fact to those who have taken the trouble to investigate the amount of passenger business done by the railroads in Illinois during the last two years that there has been a large decrease in the number of passengers carried. This is due, in our judgment, not to the amount charged for such service, but to the general depression in all lines of business, the low prices of farm products and the unsettled financial conditions which have had their effect on the passenger as well as on the freight business.

This question was before us when we revised the freight schedule in 1895 and the whole question was thoroughly considered. We did not think then, and neither do we feel now, that in justice to both the public and the railroads this reduction should be made at this time. If the country was prosperous our conclusions might be different. The statistics in our office show that for the past three years, 1894, 1895 and 1896, the average amount charged by the railroads per passenger per mile is a fraction above 2 cents, although the maximum allowed them was 3 cents.

"For the reasons above stated we do not feel that this reduction should be made by us at this time. We are also asked to recommend this reduction to the Legislature. In view of our conclusion we do not feel that it would be consistent for us to do so; however, the Legislature has the power to regulate the maximum rate which can be charged for passenger service, and we leave the matter to their wisdom."

The matters suggested by you on account of their great and general importance, have received our long and careful consideration, and unless the question were presented in a more formal manner we doubt the propriety of our expressing our own opinion with the freedom which characterized

the statements made by the Illinois board. We will state some of the more salient facts and these will aid you to reach your own conclusions in the matter.

From the statistics given in the report of this commission for the year 1895, it appears that the average amount received by the railroads doing business in Iowa for carrying one passenger one mile during the year ending June 30, 1895, was 2.27 cents.

The returns from which these results are obtained do not include any passengers carried free. The large number of passengers who travel upon reductions of rates as permitted by our statutes, ministers of the gospel, organizations of our military, excursions on holidays, special rates to the meetings of the many organizations in which our citizens at one time or another take part, State and County fairs, etc., are factors that reduce the average fare to the amount above stated. It is obvious therefore that the average must always be lower than the rate fixed by law. The character of the business renders it impossible to make any rate that will be absolutely uniform.

The most complete statistics bearing on the cost of carrying one passenger one mile are those of the Interstate Commerce Commission. It has not given these since 1893. In tabulating its statistics it divides the railroads of the country into groups. Group VI embraces the railroads in Iowa, Illinois, Wisconsin, Minnesota and parts of North and South Dakota, Northern Missouri and Northern Michigan.

For the year ending June 30, 1892, the average cost of carrying one passenger one mile, to the railroads comprising Group VI, as given by the Interstate Commerce Commission, was 2.08 cents; for the year ending June 30, 1893, as given by the same authority, it was 2.023 cents.

The Iowa report for 1895 shows only ten roads which returned the average cost of carrying one passenger one mile. The average cost to those ten companies was 2.14 cents. The result is less reliable than if it were founded upon return made by all of the roads, which would probably materially increase it.

The reports of the Interstate Commerce Commission already referred to indicate this, as the cost would naturally be greater in Iowa than in most of the territory embraced in Group VI.

In arriving at the cost of carrying one passenger one mile, as above given, nothing is charged on account of the expense of the railroads for interest, rents, taxes and miscellaneous fixed charges and, of course, nothing for dividends on stock. The passenger traffic should, of course, bear its proportion of these expenses, which constitute part of the cost of doing the business. For the year ending June 30, 1893, in Group VI, these fixed charges amounted to \$74,535,564. Under the rule of apportionment adopted by the Interstate Commerce Commission, \$23,687,402 of this expense should be charged to passenger traffic, which would make the entire cost in accordance with their figures of carrying one passenger one mile in this group of railroads 2.971 cents. It would be proper to offset against this the earnings on account of mail, express and excess baggage, which are carried by passenger trains. These earnings for Group VI for the year ending June 30, 1893, amounted to \$11,829,865, so that from the statistics compiled by the Interstate Commerce Commission it appears that to charge the passenger business of the railroads with its proportionate share of fixed charges, not including anything, however, on account of dividends and crediting it with mail and express earnings, would give us as the actual cost 2.57 cents.

The statement of the Illinois commission that there has been a general reduction of passenger business is undoubtedly confirmed by the statistics. For the whole United States the number of passengers carried one mile for each mile of railroad in 1890 was 75,751; in 1895 it was 68,572. Though the number of passengers carried was less, the passenger car mileage was greater in 1895 than in 1890, which, of course, increased the cost per passenger. In 1890 the total number of miles run by passenger trains in the United States was 285,575,804; in 1895 it was 317,565,615.

In 1895 the revenues from passenger service in the United States decreased \$33,103,378 as compared with 1894, though the figures for 1895 include 2,055.29 miles of road more than those for 1894. The total passenger earnings of the railroads in Group VI for 1894 were \$55,313,007; in 1895 they were \$43,715,287. The figures for 1895 cover 350.25 miles of line more than those of 1894.

The foregoing statements which are based upon the most accurate statistics attainable at this time would indicate:

First—That at the present time the average fare charged in Iowa is not above the actual cost of transporting the passengers.

Second—That within the last three or four years passenger earnings have decreased without a corresponding decrease in the cost of doing the business.

Some of the considerations tending to throw light upon this subject are the rates of fare elsewhere; the density of population; the earnings per mile of road derived from the passenger service and whether a decrease in the rates would increase traffic so as to render it practicable to perform the desired service at the decreased rate.

So far no State within the knowledge of this board has ever enacted a general two-cent fare law. In New York, between Buffalo and Albany, the New York Central & Hudson River Railroad is limited in the fare which it can charge from any intermediate station to Albany or from any intermediate station to any other intermediate station between Buffalo and Albany to two cents per mile. This rate does not apply from Buffalo to Albany or from Albany to Buffalo or from either of these points to any station on that road beyond the other. It was fixed more than forty years ago for the protection of the Erie canal, then a favorite State institution which the road paralleled.

Michigan has a law grading the rate in proportion to the passenger earnings. If the passenger earnings amount to \$3,000 per year per mile of road the rate must not exceed two cents. If the business exceeds \$2,000 per mile and is less

than \$3,000 the rate must not exceed two and one-half cents; and on all roads earning less than \$2,000 per mile the rate is three cents per mile. The rates apply to the roads in the Lower Peninsula; in the Upper Peninsula the roads are allowed to charge one-half cent per mile above these rates.

These are the only cases in the United States, so far as this commission is advised, at which a less rate than three cents per mile is fixed by law.

Unless changes have recently been made that have not come to the notice of the commission the following are the rates prevailing in the countries named:

ENGLAND.

First class.....	4.2 cents
Second class.....	3.2 cents
Third class	2.0 cents

FRANCE.

First class.....	4.0 cents
Second class.....	3.0 cents
Third class.....	2.0 cents

ITALY.

First class.....	3.6 cents
Second class.....	2.6 cents
Third class.....	1.8 cents

HOLLAND.

First class.....	3.2 cents
Second class.....	2.6 cents
Third class.....	1.6 cents

BELGIUM.

First class.....	2.4 cents
Second class.....	1.8 cents
Third class.....	1.2 cents

Except in England no baggage is carried free and the accommodations in the smaller foreign countries are in every respect much inferior to those furnished in America. Often in foreign countries excursion rates are made higher than the regular rates on account of the additional risk and expense.

The density of the population also affects the volume of

passenger traffic. Where the population is dense there will, as a matter of course, be more travel than in more sparsely settled districts. In Iowa the population per square mile is about 38, in England 541, Belgium 514, Holland 350, Italy 268, France 187, New York 139, Ohio 99, New England 83, Illinois 75, Missouri 43, Wisconsin 34, Nebraska 15, Kansas 19, South Dakota 5.

The population per mile of railroad in Iowa is about 247, in Illinois it is about 395, New York 813, New England 719, Missouri 447, Wisconsin 306, Nebraska 209, Kansas 108, South Dakota 129. These figures are computed from the advance sheets of the last report of the Interstate Commerce Commission.

The average passenger earnings per mile, as shown by the last reports to this commission, of the roads operating in Iowa are \$990. The Kansas report for 1895, \$844; in the Illinois report for 1895 they are \$1,582, and as shown by the report to the Interstate Commerce Commission they are \$4,422 in New England, \$4,513 in New York, and \$1,951 in Ohio.

It appears from the reports of this commission for 1895 that the average distance traveled by each passenger over the Iowa roads during the current year was 31.12 miles; the average fare therefore paid by each passenger was 70.64 cents. If the fare was 2 cents a mile the average passenger would save 8.4 cents. Whether and to what extent this difference would induce people to travel more than they do now on account of business necessity or pleasure, you can determine for yourself.

In Michigan three roads reduced their fare to 2 cents, resulting in each case in a loss of passenger earnings. In Wisconsin when a law was passed decreasing the rate of fare one cent per mile there appeared no perceptible increase in passenger traffic.

Other matters worthy of consideration in this connection are, the present efficiency of the passenger service, what effect, if any, a decrease in passenger earnings would have

upon the passenger service generally, and especially upon the number and character of the local trains.

It is also well to bear in mind that the local and branch lines in Iowa constitute a large portion of the railway mileage, and that much of the passenger business on such lines is done at a loss at the present rate.

It is also evident that as yet the Iowa railroads have not been brought up to a proper physical condition. With scarce an exception every line in the State demands large expenditures, and some of them in the very near future, for ballast, ties, new steel, changes in grades, double tracks and additional equipment, and in this condition of things we are not alone. The same needs exist in a greater degree in nearly every State adjoining us in order to bring the roads to that condition rightly required by the public needs.

The commission has thus answered you at considerable length and what we have said, together with those things suggested by it and statistics furnished in the way of an investigation upon your own part, quite fully answers your inquiries.

The present discussion of this matter, its importance to the public generally, the interests involved and your high character as the representative of the varied and vast interests of our State, as president of the State Agricultural Society, has induced the commission to reply at this great length.

The board will be glad to render you any assistance required in your further investigation of the subject.

For the commission: Very respectfully,

W. W. AINSWORTH,
Secretary Railroad Commission.

The Railways of Georgia.

BY FRANK WELDON.

I—RAILWAY RATES KEEP ON FALLING.

This is destined to be a year of great import to American railways.

Only three months have passed and they have had peremptory orders to reduce rates; heaven's floods and a deluge of hostile legislation to contend with; a court decision which went through them like a cyclone in tall timber, and now they are confronted with poor business and failing revenue.

When a merchant's trade declines he tries to reduce the price of his goods to tempt purchasers. If he cannot buy any cheaper or cut his store expenses, he looks about him for lower railroad rates. When business is brisk, the middleman does not worry about his own operating expenses or about the railway tolls. He simply buys for as little as possible and sells his merchandise at a figure which will give him a reasonable return on his investment, say 10 to 20 per cent., and is content. But if the farmers have a poor crop, or the miners strike and the output is small, or if confidence is shaken in the financial situation, trade drops off and then the manufacturer and the middleman begin to figure on how to get railroad rates reduced.

It is a notable fact that the consumer rarely appears in this role, either before traffic officials or State or interstate commissions having jurisdiction over the transportation lines and their charges. The manufacturer of fertilizers, the lumberman, the cotton merchant, the naval stores factor, the coal dealer, are the applicants invariably, but seldom do we hear of the consumer. And yet the consumer always pays the freight in the end.

What are the principal sources of freight? There is a general impression that the farmer furnishes the bulk of the railway traffic of this country, but this is a great mistake.

The mines lead in the amount of freight carried by railroads. Here in the South the mines furnish more business than the farms and mills combined. On the Southern Railway, for instance, the mines yield nearly twice as much freight as the farms produce, or as much as the forests, the mills and miscellaneous sources combined. Coal, coke, marble, stone and ores constituted almost 40 per cent. of the Southern's traffic last year, as shown by the company's annual report. Agriculture furnished less than 21 per cent., of which cotton and its products, oil, seed, meal and hulls, composed a little more than one-third.

Such articles as might be handled in a general grocery store comprised 20 per cent. of the company's total freight. Merchandise made 6.59 per cent. of the total, that is, the system handled about six and one-half pounds of merchandise to ninety-three and one-half pounds of all other classes.

The annual report of the Norfolk & Western, which does not touch Georgia, but is a good southern line, shows that last year the mines gave the road 63 per cent. of its traffic, while merchandise supplied only 12.3 per cent. In 1895 the mines furnished 70 per cent. of the Norfolk & Western's freight.

Going to the reports of the Interstate Commerce Commission, many interesting facts are learned. It is simply a matter of digging. The information is there in statistical form.

CONSOLIDATION GOING ON.

We see that the large systems are growing larger and the small roads are becoming more numerous. The middle class roads are decreasing in number. They are being absorbed by the larger systems, which are about stationary in number. In 1890 there were forty systems in the United States each of which had more than 1,000 miles of line. In 1894 the number had risen to forty-four with 100,547 miles. In 1895,

the last year for which we have statistics, there were forty-two systems in this class with 100,714 miles. The average length of these systems in 1890 was 1,947 miles. In 1895 the average length had grown to 2,400 miles. There was an average gain of 453 miles in five years for the systems which were already more than 1,000 miles in length. The number of roads under 250 miles in length was 864 in 1890 and in 1895 it was 971. So there were 107 more short roads in 1895 than in 1890. The average mileage remained about stationary.

The average gross revenue of all American roads per mile of line for the fiscal year 1895 was \$6,050. For group 5, Interstate Commerce Commission classification, the gross earnings per mile of line operated were \$4,111. This is Georgia's group. So our group fell behind the average for the whole country \$1,939 per mile. In that year Georgia had 5,240 miles of main line. If this mileage could have earned as much as the average roads in the United States, the earnings would have been \$10,160,000 more than they were, or say 16 per cent. on their capital stock. But we do not want them to earn their fixed charges and 16 per cent. on their capital stock, too. Neither should we want them to fail to make a reasonable interest. Then somewhere in between the present tariff or the one then existing and the average schedule for the United States we would find the fair and reasonably remunerative rate. Why should Georgia exact more from the roads than other States; not any State, but the average State? The conditions in Georgia are certainly as favorable for making a livelihood as in the average run of States.

HAVE WE TOO MANY ROADS?

Sometimes it is said that we have too many railroads in Georgia. But who would be willing to do without the line running nearest to his home? Would any citizen of Marietta be willing to relinquish the Atlanta Knoxville & Northern? Would a resident of Griffin surrender the Griffin & Carrollton or the line over to McDonough? Would a resident of Americus sign a decree, were it in his power, ordering the Georgia & Alabama to stop running trains for the next three years until

the country could grow to it? Yet Americus had the South-western and Griffin had the Central and Marietta had the Western & Atlantic long before the other lines were projected. If it were possible to attempt to remedy the situation by curtailing the railway mileage of the country, it would be another case of letting your wife's relatives go to the war.

Georgia has one mile of railroad to every 400 population.

The average for the United States is about 380 people to one mile of road, so we have less road than we are entitled to under the general law of average.

EARNINGS ARE FALLING OFF.

Railroads are not earning so much as they once did. They are doing more business and making less money. Their expenses are heavier and they get less. Like some farmers, they are making a bigger crop and selling it for less. Railroads sell transportation, which is their crop, the year round. They are making more to one acre, or to the mile, rather, and it is bringing them in 10 per cent. less revenue.

To illustrate: The railroads in our group made \$404 more per mile in 1890 than they did in 1895. There was a loss of \$2,117,000, approximately, in the gross for Georgia alone.

But all the railroads in the United States, that is, as a whole, have been getting less and less every year for six years. In 1890 their total receipts were \$50,000,000 more than they were five years later. As pointed out above, this was not due to a falling off in business, because they hauled 12 per cent. more freight, and got 15 per cent. less for it.

The most rigid economy was practiced, but no corresponding reduction could be made in expenses. The fixed charges really increased throughout the whole country until 1893, when they began to decline, after the reorganization and scaling down of millions of interest-bearing securities. But it was only a trifle, a shade, perhaps \$10,000,000, for the whole \$11,000,000,000 of capitalization.

Operating expenses were reduced \$100,000,000 in 1894 and 1895. Little wonder that so many idle people were hunting work. That was \$50,000,000 a year, or \$500 a year for

100,000 men—enough to keep body and soul together. The reduction was equivalent to laying off 100,000 \$500 men one year, and then the same number the second year, making at the end of the second year 200,000 men turned out.

It is a noticeable fact that the wages of individual engineers, firemen and other trainmen, conductors excepted, increased in 1895 over 1894, but they were still lower than they had been in 1892. The salaries of individual general officers were considerably lower in 1895 than in the year previous, but in 1895 they were higher than they had been in 1893 and 1892. But there were fewer general officers and fewer of all employes.

The percentage of operating expenses to operating income increased slightly on all, due to slightly increased traffic and improved service. Consolidations had taken place, four men were doing the work of five, perhaps, but not getting the pay of five. They were, however, getting a little more as individuals.

SALARIES AND EXPENSES REDUCED.

As showing the decrease in many items in general railroad expense account, the following are taken from the last report of the Interstate Commerce Commission:

Salaries.	1895.	1894.
General officers.....	\$ 9,000,000	\$12,250,000
Clerks	9,350,000	14,000,000
Engine and roundhouse men.....	67,000,000	67,640,000
Train service.....	54,000,000	59,450,000
Switchmen, flagmen and watchmen..	28,000,000	23,404,000
Law expenses.....	5,443,000	5,551,000
Injuries to persons.....	6,383,000	7,065,000
Commissions	1,042,000	1,731,000

Only one item shows an increase, and that is for the pay of switchmen, flagmen and watchmen, whose total wage was advanced \$4,600,000.

If we glance at a summary of expenses for the different departments of transportation we see decreases everywhere except in conducting transportation, and this increase is partly

due, at least, to a different method of charging adopted by the statistician.

	1895.	1894.
Maintenance of way and structure.	\$133,853,841	\$137,215,000
Maintenance of equipment.....	106,421,600	108,797,000
Conducting transportation.....	401,492,046	378,595,000
General expenses.....	33,461,153	76,519,494
Total	\$675,228,640	\$701,126,494

Georgia's group of States comprises Florida, Alabama, Mississippi, Tennessee and Kentucky, or the extreme south-eastern group.

GEORGIA'S RATES ARE LOWEST.

Now, coming to a comparison of rates, we find that the average rate per ton per mile in our group was for 1895 a shade less than 9 mills, whereas six years before it was $1\frac{1}{2}$ mills higher. We find that the average freight rate per ton mile was lower by three-fourths of a mill for the nation than it was in this group, but we find only three groups which had a lower average rate than the Georgia group. And it must be remembered that in Georgia rates are much lower than in either of her sister States of this group. New England, with her immense local traffic had a rate $2\frac{1}{2}$ mills higher than the south-eastern States. The New York-Pennsylvania group, with vast mine products, taking a low classification; the Ohio, Indiana and Michigan peninsula group, with lakes on the north and the Ohio river competition on the south; and the Virginias and Carolinas, the latter suffering from too much commission and politics, have a less charge per ton mile than our group, but I doubt if any of their rates are lower than Georgia's, item by item per 100 pounds or per ton. I have heard it stated to the Georgia Railroad Commission that their tariff is the lowest in the United States. Texas has the reputation of crowding the railroads hard on rates, but they are still much higher there than in Georgia. The authority quoted above shows the average Texas rates to have been 3 mills higher in 1895 than the rates in group 5.

The average rate in New England and in the whole country west of a line drawn through New Orleans, Cairo, Evansville and Chicago is higher than in group 5.

A comparison of rates published in *The Constitution* showed that Georgia had the lowest schedule in the South, but other States in our group raise the average above Georgia's tariff.

The groups in which the rate is lower than in ours furnished more freight to the roads. The Virginias and the Carolinas shipped 5 per cent. more freight per mile than we did and the average for the United States was 10 per cent. heavier traffic than our roads had.

The year 1893 witnessed the largest volume of business ever done by American roads, and the rates were better than they have been at any time since. For the whole country the charge was 8½ mills, as against 8 1-3 for 1895.

While 1893 was a panic year for the banks, the year when clearing-house certificates circulated in lieu of bank notes and specie, it was a great year for the railroads. They had received an enormous amount of business before the panic and the extra session of Congress struck the country.

JUNIOR SECURITIES PAY LITTLE.

Now, let us look at the investment side of the question. Railway stocks are practically a dead investment. There was a time when Central Railroad of Georgia was a sure 4 per cent. investment. Now its stock brings nothing and only one class of income bonds paid anything last year, and that was a small return, with three or four classes of securities below them getting nothing.

In the group of States between the Savannah and the Potomac, where the rates were a little lower than in our group, only one-tenth of the capital stock of the roads paid a dividend.

Ninety per cent. of the stock investment paid nothing, though in New England, with three mills per ton per mile higher rates, only 22 per cent. of the stock was non-dividend, and that on almost double the amount of capital stock per mile. In New England the stock per mile of line is \$34,349; in the Georgia

group \$20,235, and for the United States \$28,602. So it is seen that our roads are stocked at 30 per cent. less than the average for the United States, and it may be mentioned right here that the funded debt of the roads in our group is but \$23,153 per mile of line, against an average of \$31,048 for the United States. And there we are about 24 per cent. below the average.

So the charge of over capitalization does not apply unless it be said that the average for all American roads is far too high.

We have not much to boast of, though, over the Carolina and Virginia roads, for only 15 per cent. of our capital stock paid dividends.

It is notable that in Texas, where the Commission and the Legislature have been particularly hostile to railroads, not one of them pay a dividend on stock. There does not appear to have been a dollar paid on stock by a Texas railroad from 1890 to 1895, with the exception of the year 1894, when some road paid a few thousand dollars to its stockholders. The shock must have killed them or the management, because the dividend was not repeated in 1895.

Only 30 per cent. of the entire railroad stock in the United States is paying a dividend. The proportion is shrinking, too, all the time. In 1888 it was about 39 per cent. In 1891 it was a little more than 40 per cent., but for the next five years it steadily diminished, until, in 1895, it had run down to 30 per cent., and for this year it will barely exceed 25 per cent.

SECOND LOWEST IN CAPITALIZATION.

The total railway capital of the United States of all kinds—bonds, stocks, equipment, trust obligations and miscellaneous—is \$11,000,000,000 in round numbers, and the total capital per mile is \$63,206. This is less than it was in 1893 and 1894.

We find that our group is next to the lowest, ours being \$45,766 per mile, and group 7 being \$43,526. Now group 7 is Montana, Wyoming, Nebraska and parts of the Dakotas and Colorado. Rights of way were free to the roads in most of those

States, terminals cost little or nothing, the construction is of the very lightest kind, and some of the lines got enormous land grants thrown in. But here are the figures by groups, total capitalization per mile of line:

New England.....	\$60,896
New York, Pennsylvania, Maryland, New Jersey, Delaware	120,192
Ohio, Indiana, Michigan.....	68,985
Virginias and Carolinas.....	47,250
Georgia group.....	45,766
Illinois, Iowa, Wisconsin.....	49,039
Montana, Wyoming.....	43,526
Missouri, Kansas, Colorado.....	58,610
Texas	51,036
Pacific slope.....	84,451
United States.....	63,206

New York, Pennsylvania, Maryland, New Jersey and Delaware have the heaviest capitalization, almost three times as much per mile as our roads. They have double tracks, heavy steel rails, expensive terminals in cities, handsome local stations and costly equipment. New England roads are a little below the average, and those of Ohio, Indiana and Michigan are \$5,200 above. On the Pacific slope the capitalization is very nearly double what it is in our section.

But it is said that the capitalization is inflated, and we have found that the average was \$63,206, while in the Georgia group it was but \$45,766.

Georgia has a railroad of her own 138 miles long, on which she gets a rental of \$420,000 a year. A road as firmly established and substantial as the Western & Atlantic could float bonds at 5 per cent. At that rate of interest \$420,000 rental is equivalent to a bonded capitalization of \$8,400,000, or \$60,800 per mile without any capital stock.

II—WAGES AND RATES FALL TOGETHER.

When we talk about reducing railroad rates we do not always look to see what will result.

We think of a big saving somewhere, but not one in a hundred of us ever figures out just how much it is to the individual citizen in dollars and cents.

Who gets the benefit of a reduction in rates, anyway?

There is no question as to who ought to get it, but there is some as to who actually does.

The consumer is the person who is by right entitled to every reduction in freight rates. He has to pay the freight—always. He may not see the item when he pays his bills to the contractor, the manufacturer, the merchant, grocer or other middleman, but it is there just the same. He has paid every cent of freight, and perhaps a little more than the railroad got for hauling the article.

When the farmer buys ten pounds of nails or a plow or a ton of fertilizers, he pays the freight. When the plow manufacturer buys a barrel of flour, a ham, or fifty bushels of oats for his horses, he pays the cost of transportation. When you buy a suit of clothes, a pair of shoes or anything else which you consume yourself, you pay the freight. If you merely buy to sell again, you make the next man pay for the transportation. And we have seen instances where we paid more on account of freight than the railroads charged. The middleman got that as an extra rake-off. The sales of fertilizers the past season furnish illustrations of that. The freight charge was reduced 20 per cent. in Georgia by the commission's orders, but the fertilizer salesmen tell me that they did not take that off the farmer's bill because it was so small that the individual consumer made no point of it. In the aggregate, however, it amounted to \$200,000 loss to the railroads, they say.

Who are the great consumers? So far as that goes, one man consumes about as much as another of the necessities of life. Every man's freight bill on what he eats averages about the same, except the farmer, who produces about everything that goes on his table, except tea, sugar and coffee.

As I pointed out in an article a few Sundays ago, the mines supply more freight than any other one source, shipping

from two to three times as much weight as the farmers. The coal and the iron ore, lime, marble and stones which come from the earth are widely, but quite evenly, distributed when they enter into manufactured products.

The freight charge enters into the cost of everything we buy which has had transportation. I take it that the farmer pays less freight on what he buys than the other man pays on what the farmer ships.

In other words, the producer of cotton, naval stores, grain, hay, bacon and beef ships more than he buys.

As stated above, the consumer should have the benefit of any reduction in rates, if not in a lower price on what he buys, then in sharper competition, for it must be remembered that many a reduction in freight charges is made to enable a distant producer or manufacturer to enter a new market.

THE WAGE SIDE.

There is another side to this question, and that is, where does the loss of revenue following a cut in rates strike? If somebody is benefited by a reduction, someone else has lost by it. True, a reduction sometimes stimulates shipments, and a railroad may actually make more by charging a lower rate than a higher rate. But reliable statistics show that as rates fall gross revenue declines, and wages fall with the rates.

This is a proposition as clearly demonstrated as that two and two make four.

The uninterrupted fall in rates for years past was pointed out in the article referred to above. In 1888 the average rate on all railroads in the United States for hauling one ton of freight one mile was 1 cent. For 1895, the last year for which Government statistics have been made up, the average was .839 cent, or practically 8 2-5 mills for the whole country. There was a decrease of 13-5 mills in seven years. That seems insignificant at first glance, but it would have meant \$128,000,000 more to the railroads for just one year if they had obtained it, or something like \$1,000,000,000 for the seven years.

A loss of one mill per ton per mile on all the traffic in

the United States means a loss of \$80,000,000 a year to the roads.

Now, let us look at the wage side. We find in the first place that as rates fell the roads dismissed employees. Pay rolls had to be cut, and this was accomplished in two ways—forces were reduced, and the wages of those who were retained were cut.

In 1892 the railroads employed 506 men to every 100 miles. In 1894 they had cut the force to 444, and in 1895 they had reduced still further to 441.

	1895.	1894.	1892.	1888.
Revenues per ton per mile.....	.838	.850	.875	1.00
Employees per 100 miles.....	441	444	506	—

Again, if we compare the compensation received by the officers and employees in 1892 and 1895, we find that both in

Class.	Daily average and number of employees per 100 miles.		300 days' compensation of all employees per 100 miles.	
	1895	1892	1895	1892
General officers	3 \$9.01	4 \$7.62	\$ 8,109	\$ 9,144
General office clerks.....	15 2.19	16 2.20	9,855	10,560
Station agents.....	16 1.74	16 1.81	8,432	8,688
Other station men	41 1.62	43 1.68	19,926	21,672
Enginemen.....	20 3.65	23 3.68	21,900	25,392
Firemen	20 2.05	23 2.07	12,300	14,283
Conductors.....	14 3.04	16 3.07	12,768	14,736
Other trainmen.....	35 1.90	42 1.87	19,950	23,814
Machinists.....	16 2.22	18 2.29	10,656	12,366
Carpenters.....	20 2.03	25 2.08	12,180	15,600
Other shopmen.....	50 1.70	54 1.71	25,500	27,712
Section foremen.....	17 1.70	18 1.76	8,670	9,504
Other track men.....	87 1.17	106 1.22	30,537	38,796
Switchmen, flagmen	24 1.75	26 1.78	12,600	13,704
Tel. operators, dispatchers.....	12 1.98	13 1.93	7,128	7,377
All other employees.....	47 1.91	60 2.07	26,931	37,260
Total.....	441	506	\$ 247,442	\$ 290,608

this country as a whole and in our group in particular, wages declined. There are two exceptions, taking the whole country. The operators and train dispatchers managed to average 3 cents more per day in 1895 than in 1892, but there were

not so many of them to the 100 miles of road. Then, the general officers got a raise in those three years, but one general officer to every 100 miles was let out.

Glance at the table on preceding page for a moment and you will see that all along the line wages were cut.

There was a saving of \$43,166 on every 100 miles of railroad, and it came out of the wages of the men; a small reduction for each man, but sixty-five men had been dropped from every 100 miles. That was a reduction of $12\frac{1}{2}$ per cent. in three years.

THE GEORGIA GROUP.

Now study the daily pay for our own group, and you will discover that wages have gone down with the rates, and in many instances the reductions have been sharp. The general officers got a raise of 68 cents a day.

Average daily compensation in dollars for Georgia, Florida, Alabama, Mississippi, Tennessee and Kentucky :

Class.	1895.	1892.
General officers	\$6.64	\$5.96
General office clerks	1.73	1.85
Station agents	1.42	1.73
Other station men	1.41	1.51
Enginemen	3.63	4.46
Firemen	1.78	2.17
Conductors	3.10	3.58
Other trainmen	1.68	1.98
Machinists	2.23	2.36
Carpenters	1.81	1.98
Other shopmen	1.47	1.48
Section foremen	1.55	1.72
Other trackmen .....	.87	.96
Switchmen, flagmen and watchmen.....	1.72	1.87
Telegraph operators and dispatchers	1.84	1.93
All other employes and laborers.....	1.55	1.85

The connection between falling revenue and the payroll is so close that employes of all roads look out for reductions in hours, number of men or wages whenever the earnings be-

gin to fall off. On the large systems it takes sixty days to put a new order of things in effect, but the payroll is almost invariably the first mark when economy begins. As earnings go up the army of employes is increased, and as they go down, men are put out right and left. In April the president of one of the smaller systems told me that the earnings of his company did not justify him in keeping all of his then force, and he said that he would cut his payroll \$3,000 in May.

Every railroad man who loses a position makes one more competitor for some other laboring man or mechanic in another field. When a railroad lays off 10 per cent. of its carpenters, machinists, engineers, clerks or telegraph operators, that many men go into active competition with the carpenters, machinists, engineers, clerks and operators employed outside of railroads. The labor organizations recognize this, and they are not joining in the war on railroads, but these organizations are going to rebuke the demagogic politicians who seek office on a platform of hostility to the railroads. The demagogue who asks a workingman's vote to aid in laying unjust burdens on the transportation lines, asks the man to vote a fellow workman out of a job and into competition with himself.

An army of railroad men has been laid off in Georgia in the last few years, because of the low earning capacity of the lines. Georgia has the lowest rates in the South, and the earnings, both gross and net, of the roads in our group show a decrease. In 1893 the net earnings per mile for all the railroads in the South Atlantic and Gulf States were \$350 less per mile than they were ten years before.

The accompanying diagram shows at a glance the relation which Georgia's rates bear to those of other Southern States. Flour and grain are two of the important articles of traffic on all railroads. In the standard classification C covers flour and D grain.

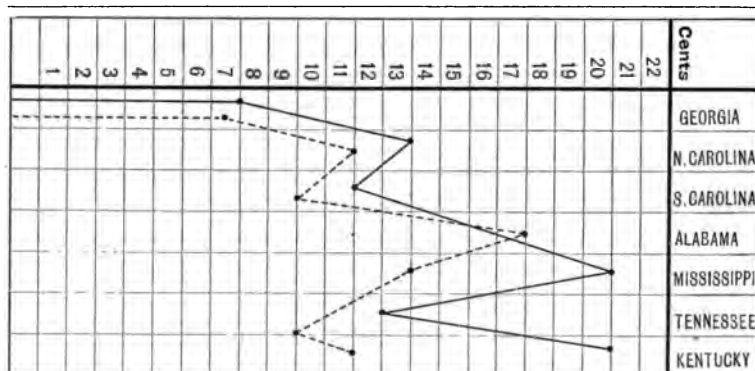
Systems like the Southern, the Central and the Plant take the same class in each State. A rate which applies to one road applies to the other two and the greater part of the

mileage in all the Southern States takes the rates which these roads are allowed to apply. Strike an average on all classes of freight and it will be found that Georgia has the lowest rates.

Here are the rates in cents per 100 pounds for half a dozen classes in various States for forty miles:

	1.	2.	A.	B.	C.	D.
Georgia	34	30	15	13	8	7½
North Carolina	40	37	14	17	14	12
South Carolina	40	35	13	18	12	10
Alabama	40	34	17	18	16	18
Mississippi	46	42	22	24	21	14
Tennessee	35	30	21	21	13	10
Kentucky	46	41	22	24	21	12

Georgia is lower in almost every instance. And what is true of forty miles is true of all distances except occasionally on short hauls.



The first zigzag line represents Class C, or flour rates, while the dotted line represents Class D, or grain rates.

If Georgia's freight rates were reduced one-third they would be out of all proportion to the charges in neighboring States.

How many roads in Georgia earn dividends on their stocks? The Central has not paid a dividend since December,

1891. The Southern never has paid one. The Plant's last dividend was 2 per cent., I am informed, but that was not paid last year. The Georgia Carolina & Northern and the Georgia Southern & Florida are not making dividends. The Georgia's stockholders get a dividend, but their road does not make it. The Atlanta & West Point earns 6 per cent., but 50 cents of every dollar it makes come from through business and is so much money brought into the State by good management. And, by the way, 70 cents of every dollar which the West Point earns are disbursed here in the State. The local traffic would not support the road if it had to depend on that.

The State's own road, the Western & Atlantic, is a good earner, but if it were not fortunate in having heavy through traffic it could not pay the handsome rental which the State gets.

Through rates cannot be put up by a commission's orders and if they could be raised by agreements among the roads entering Georgia the lines would have to go out of through business and the consumers here at home would be deprived of competition.

If local rates are reduced the employes and the service will suffer first and the public suffers when the service is curtailed.

And diminishing earnings bring on receiverships and loss to the investors.

III—RAILWAY RATES AND CAPITAL.

"The cost of delivering bread from the baker to his customers is a larger element in the price of bread than the cost of getting wheat from the farmer to the miller and flour from the miller to the baker, though the one is but a few hundreds of yards and the other as many hundreds of miles."

This quotation is from Professor Hadley's work on "Railroad Transportation." He was discussing at that point the insignificance of transportation charges in the prices of products and the relation between rates and capitalization.

Hadley observes that when it is said that railroad rates are too high any one of these things may be meant:

- Either that the rates give too high a profit;
- Or that they prevent the development of business;
- Or that they are higher than in other countries.

To make a local application of these principles, it is found that the railroads are not making too high a profit now, nor even a reasonable profit, but, on the contrary, a great many of them, even with the most economical management possible, are drifting helplessly toward bankruptcy and receiver-ships.

As for the development of business, it cannot be denied that our railroads have been the greatest of all factors in the growth of our internal commerce. There is hardly a factory, foundry, furnace, mill, mine, kiln, or industry of any kind which some railroad has not helped in the matter of getting raw material or machinery or shipping out the manufactured product at a cheap rate. "Nowhere have railroads done so much to develop business as in the United States and nowhere has the actual development been more rapid," says Professor Hadley.

It is so well known that rates in the United States are lower than in any other country in the world that it is unnecessary to discuss that proposition here.

Now as to capitalization.

There is no question that American railroads have the lowest capitalization in the world. There may be some little country like Sweden with less miles of railroad than Georgia has, and those light and cheaply constructed, which has a lower capitalization, but Sweden is not in our class.

The German Government reports are probably as complete and exact as anything we can get. Take the Archiv fur Eisenbahnwesen and Newmann-Spallart's investigations and we find the actual cost of railroads in Europe and the United States to have been approximately as follows:

	Cost per mile.	Population per mile of road.
Germany	\$105,000	2,000
Great Britain	204,000	2,000

	Cost per mile.	Population per mile of road.
France	128,000	2,000
Russia	80,000	5,000
Austria-Hungary	105,000	3,000
Italy	92,000	5,000
Spain	78,000	6,660
Belgium	132,000	2,300
British India	66,000	25,000
United States	63,206	380

The American roads stand at the bottom of the list in capitalization, and the population per mile of road is five times greater in Great Britain and Germany than in this country. Population per mile of road is a very important factor in rates, because the more people there are to serve the greater the volume of business, and the greater the volume the lower the cost.

Having seen that American roads are capitalized far below European lines, let us study the capitalization of our own roads by groups.

The railways of the United States are divided into ten groups for statistical purposes by the Interstate Commerce Commission.

New England is one group, New York, Pennsylvania, New Jersey, Maryland and Delaware constitute the second group. Our group is No. 5. But here is the classification for the whole country:

Group 1—New England States.

Group 2—Middle States, north of Ohio river and east of Allegheny mountains.

Group 3—Middle Western States, North of Ohio river and east of Illinois.

Group 4—Virginia, North Carolina, South Carolina and part of West Virginia.

Group 5—All other Southern States south of the Ohio and east of the Mississippi river, namely, Georgia, Alabama, Mississippi, Florida, Tennessee, Kentucky and part of Louisiana.

Group 6—Illinois, Wisconsin, Minnesota, Iowa and parts of Missouri and of the Dakotas.

Group 7—Montana, Wyoming and parts of the Dakotas.

Group 8—Arkansas, a part of Missouri, Kansas, Oklahoma and three-fourths of Colorado.

Group 9—Louisiana, Texas and about half of New Mexico.

Group 10—All the States west of the Rocky Mountains.

The figures given below are from the latest report of the Interstate Commerce Commission, and they show that the average capitalization per mile of road is lower in the South than in any other part of the United States east of the Missouri and Mississippi rivers:

	Stock per mile.	Bonds per mile.	Other forms of indebtedness, per mile.	Total.
Group 1.....	\$34,349	\$23,130	\$3,417	\$ 60,896
Group 2.....	53,957	57,844	8,391	120,192
Group 3.....	30,533	34,073	3,879	68,485
Group 4.....	23,772	21,950	1,527	47,250
Group 5 (Ga. group)....	20,325	23,153	2,287	45,766
Group 6.....	20,790	26,260	1,989	49,039

Our roads in Georgia, Florida, Alabama, Mississippi, Tennessee and Kentucky have the lowest capitalization of all on this side of the Mississippi, and probably three-fourths of the mileage has at some time been sold for the benefit of its creditors and reorganized with a large part of its old indebtedness scaled down. The Carolina and Virginia roads have been through receiverships, too, in the last ten years, and their total capitalization per mile is low.

Notwithstanding the low basis of fixed charges per mile of road in the South, the Southern roads, upon the present basis of freight and passenger rates, are, as a whole, barely able to earn the amount of their fixed charges.

The following table shows the gross earnings from operation per mile of road, operating expenses per mile of road, net income from operation per mile of road, and net income after payment of fixed charges, but before payment of dividends per mile of road, as per advance copy of Interstate Commerce Commission's statistical report for 1895:

PER MILE OF RAILROAD.

Groups.	Miles of road.	Gross earnings from operation.	Operating expenses and taxes.	Income from operation.	Net income from all Sources after payment of fixed charges, but before paying dividend.
1.....	7,647.28	\$10,867	\$7,936	\$2,931	\$1,782
2.....	20,365.97	13,795	9,527	4,268	1,546
3.....	22,923.18	7,157	5,339	1,818	457
4.....	10,676.11	3,851	2,800	1,051	*15
5†.....	18,944.06	4,111	2,948	1,163	174
6.....	41,433.81	4,880	3,260	1,620	503

*Deficit. †Georgia group.

The net income from the operation of group 5 was sufficient to pay fixed charges of 5.02 per cent. on a funded debt of \$23,153 per mile; but after including income from all sources, there remained applicable to dividends an amount equal to only .85 of one per cent. on the capital stock.

In view of the low average capitalization per mile of road, it surely cannot be claimed that the roads in the South, upon the present basis of rates, are producing a sufficient or reasonable return upon the cost of the properties.

As the average ratio of expenses to earnings of Southern roads is now as low as is consistent with safe operation, a reduction in rates, however slight, would mean an equal reduction in net earnings, and would make it impossible for many of the lines to meet their present fixed charges.

The following table shows the total percentages of non-dividend-paying capital stock of railroad companies, by groups, as reported by the Interstate Commerce Commission for the years 1890-95, inclusive:

	1890.	1891.	1892.	1893.	1894.	1895.
Group 1.....	24.58	23.16	23.43	21.97	21.48	22.35
Group 2.....	47.27	44.57	43.03	45.45	45.56	50.44
Group 3.....	63.56	55.92	52.80	52.66	62.16	70.35
Group 4.....	70.84	73.02	69.40	67.40	89.24	90.25
Group 5*.....	67.02	66.90	59.96	69.44	85.12	86.20
Group 6.....	63.94	57.35	58.72	52.77	54.37	55.68

*Georgia group.

It thus appears that in no section of the country is there so little profit to the holders of railroad securities as in the South. The tables relating to traffic, as shown in the Interstate Commerce reports, show clearly the causes of these conditions.

The volume of traffic handled per mile of road in the various groups, as reported by the Interstate Commerce Commission, gives the principal reason for the low earning capacity of Southern roads. The statement is as follows:

Year ending June 30, 1895.	Tonnage move- ment per mile of road, tons.	Earnings per freight train mile.
Group 1.....	449,325	\$1.79
Group 2.....	1,354,999	1.70
Group 3.....	750,200	1.47
Group 4.....	386,449	1.33
Group 5 (Ga. group)	313,496	1.52
Group 6.....	335,953	1.56

Average for United States..... 479,490 \$1.61

These being the facts as to light volume of freight traffic handled by the railroads in the South, an examination of relative rates obtained in the various sections for the carriage of freight shows that, considering the comparatively light volume of traffic, the average rates in the South are now exceedingly low.

The average rates per ton per mile, and the average freight earnings per mile of road, territorially divided for the year ending June 30, 1895, were as follows:

	Average rate per ton per mile. Cents.	Freight earn- ings per mile of road.
Group 1.....	1.223	\$5,646.89
Group 2.....	.698	9,583.25
Group 3.....	.642	4,971.11
Group 4.....	.670	2,687.17
Group 5 (Ga. group).....	.895	2,877.67
Group 6.....	.961	3,360.09

Average for United States..... .839 \$4,130.24

It should be understood, as explaining the low rate of

freights in groups 2 and 3, that the railroads in that section comprise most of the trunk lines between the East and the Mississippi valley and the great lakes, so that a very large proportion of the traffic of these lines is necessarily low-grade tonnage. Included in the traffic of these lines is the bulk of low-grade tonnage from the great coal and iron region of the country. The enormous traffic per mile of railroad in groups 2 and 3 makes it possible to operate at a profit generally, notwithstanding the low average rates obtained from freight traffic.

The low rate in group 4 is due to the fact a very large proportion of the freight traffic of the two principal east and west lines in that section (the Chesapeake & Ohio and Norfolk & Western) consists of coal shipments to the seaboard at naturally very low average rates per ton per mile.

The average freight rates in Georgia, and in the South generally, are considerably lower than the rates in the Northern Mississippi valley, where the volume of freight traffic handled per mile of road is about equal to that in the South.

A summary of the facts brought out by the above comparisons covering the general situation of the roads in the South, shows that—

1. The Southern roads, as a whole, are to-day earning much less than a fair return upon the actual cost of the properties, or upon what it would cost to-day to replace them. They are capitalized at a lower rate per mile than in any other section of the country east of the Mississippi and Missouri rivers.

2. The volume of traffic per mile of road, and the earnings per train mile, are less than in any other section of the country east of the Mississippi river.

3. The freight rates are lower in the South than in any other section of the country, when the relative volume of business is taken into consideration, and are absolutely lower than those of the roads in the Mississippi valley north of the Ohio and Missouri rivers. (Group 6.)

4. The Southern roads are to-day operating at such a

narrow margin of surplus over the interest on their bonded debts that any further reduction in rates would certainly throw many of the companies into insolvency, and make even more hopeless the condition of those which are already insolvent.

Are American Railway Rates Too High?

BY H. T. NEWCOMB.

Except between the comparatively few localities connected by waterways (and excluding, for the moment, transportation by animals), railways furnish the only means of transportation cheap enough to be practicable in connection with productive industry as now organized. Prior to their introduction, the market for surplus agricultural products was confined within narrow limits by the excessive cost of movement. Over one of the best of the old turnpikes it cost \$1.00 in 1807 to transport a barrel of flour weighing 200 pounds 74 miles from Columbia, Pa., to Philadelphia. It is now possible to ship 500 pounds of flour by rail from Chicago to New York, 912 miles by the shortest route, for the same sum. The reduction from $13\frac{1}{2}$ cents to $4\frac{1}{2}$ mills per ton per mile is from a rate absolutely prohibitive, for the longer distance, to one at which the entire surplus product of an area greater than the whole of Europe can be profitably shipped.

The progressive reduction in rates since the introduction of railways, which has been very great, is best illustrated by comparisons between the prices of various commodities during successive periods and the rates contemporaneously charged for their transportation. The average export price of flour was \$5.88 per barrel in 1880, and \$4.11 in 1894, and the average rate from St. Louis to New York 84 cents and 50 cents respectively during the same years. Comparing prices and rates, it appears that in 1880 freight charges absorbed the value of 1 barrel in every 7, but in 1894 only 1 in every 8.22. The average export price of wheat during 1868 was \$1.90 per bushel, and the average rate for its transportation by rail from

Chicago to New York 42.6 cents, or 22.4 per cent. of the price. Although the price for 1894 was unprecedentedly low, being only 67 cents per bushel, or 20 per cent. less than during the lowest previous year, the decline to 12.88 cents per bushel for transportation from Chicago to New York was still greater, the rate for the latter year being only 19.2 per cent. of the price. The average New York price of mess pork during 1893 was \$18.35 per barrel, or 83 per cent. of the average for 1867, while the cost of bringing it by rail from Cincinnati in the latter year was but 36 per cent. of that in the former. The average rate per ton per mile charged for the transportation of anthracite coal over the Lehigh Valley railroad during 1874 was 2.21 cents; 1880, 1.43 cents; 1885, 1.22 cents; 1890, 0.84 cent; and during 1893, 0.82 cent. Comparing these rates with the annual average prices of anthracite coal in Philadelphia, as given by the American Iron and Steel Association, it appears that the cost of transportation would have doubled its price at a distance of 206 miles from Philadelphia by rail in 1874, at 336 miles in 1885, and at 476 miles in 1893.

The average charge for carrying a ton of freight one mile via thirteen of the most important railways in the United States during 1865 was 3.08 cents; 1870, 1.80; 1875, 1.36; 1880, 1.01; 1885, 0.83; 1890, 0.77; and 1893, 0.76 cent. These railways performed one-third of the entire freight transportation during 1893, and from the figures given it appears that 76 cents would pay for as much transportation over their lines in 1893 as could have been obtained for \$3.08 twenty-eight years earlier. This reduction, amounting to three-quarters of the average rate for 1865, has been exceeded by that in the price of but few even of those articles in the manufacture of which new inventions have worked the most radical changes. For the present purpose of comparing freight rates with contemporary prices it is unnecessary to reduce currency rates (prior to the resumption of specie payments in 1879) to the gold basis; but in considering the absolute reduction in rates the proper allowance should be made.

The entire transportation performed by the railways of the United States during the twelve years ending June 30, 1894, was equivalent to moving 136,799,677,822 passengers and 807,935,382,838 tons of freight one mile. Had rates averaging as high as those of 1882 been collected upon this traffic, the railways would have earned \$2,629,043,459 more than they actually received. Had the amounts annually saved by the public through reduced charges for moving passengers and property been applied to paying the principal and interest of the national debt, which on July 1, 1882, amounted to \$1,463,810,400 (estimating interest from that date at 4 per cent. per annum, which is higher than the average actually paid), it would have been extinguished some time during the fiscal year 1893, and the surplus accumulated since that date would have amounted to nearly \$700,000,000. The obvious answer to such an estimate as the foregoing is that the increase in traffic which has taken place during the last twelve years would have been impossible at the rates of 1882. Admitting the force of this contention, it is interesting to observe that, had the amount of traffic remained during each of the succeeding years what it was during 1882, the difference between the cost to the people of its transportation at the rates actually charged and the cost at those of 1882 would have amounted to a saving upon the part of the public of \$1,452,148,093, or a little more than 99 per cent. of the amount of the entire national debt on July 1, 1882. Had traffic increased half as much as it actually did, the saving to travelers and shippers would have been \$2,040,284,477.

The constant pressure for concessions in the price of transportation upon those railway officials whose duties include rate-making is enormous. A reduction of a few cents will often open new and valuable markets to the products of particular localities, and, if not immediately balanced by corresponding reductions in rates from other sources of supply, may enable their shippers to monopolize what was formerly a common market. Consequently a single reduction must often be met by numerous others from points widely removed

and frequently in an opposite direction from the market. Competing shippers in the same locality are always endeavoring to obtain more favorable rates than those granted to their rivals, and thus secure an advantage which not infrequently amounts to the difference between a gain and a loss. The use of particular commodities is often limited territorially by the freight charges from the point of production to those of consumption; and, when charges are too high on certain articles, substitutes produced nearer the points of consumption, or carried at lower rates, are frequently used. Similarly, the charges for passenger transportation, by limiting the distance to which agents can profitably be sent and otherwise hindering personal communication, effectively prescribe the limits of practicable interchange of commodities. Naturally, then, we find, the entire force of commercial competition, possibly the most tremendous product of modern civilization, arrayed in opposition to the efforts of railway managers to maintain their charges at profitable figures.

A very large portion of railway traffic is obtained in competition with carriers making use of natural waterways and canals. For example, the grain traffic from Chicago eastward can be obtained during the greater portion of the year only at rates low enough to prevent its going to the numerous lake and canal lines. It is not surprising, therefore, that the normal rate on this traffic by rail from Chicago to New York amounts to only about four mills per ton per mile, and that in times of particularly strenuous competition it has been temporarily as low as two mills. In addition, the deplorable tendency among traffic officials to seek increased tonnage without sufficient regard to the cost of handling it, coupled, as it is, with the frequently unfortunate lack of intimate connection between the traffic and operating departments, must be given considerable importance in any attempt to measure the forces that tend to reduce charges.

No one can investigate the history of railway charges in the United States without reaching the conclusion that they tend constantly toward a minimum, retarded only by the

feeble effort of officials who are often more concerned to obtain traffic than to make the business of transportation profitable. This minimum is the point at which the revenue produced will pay operating expenses and leave something, however little, as a recompense to invested capital. Rates cannot go permanently lower than this, because, if they do, operation will be discontinued. That they tend toward it is clearly indicated by the record of decreasing returns.

Though the railway system of the United States increased from a total length of 114,712 miles in 1882 to 178,709 miles on June 30, 1894, or 56 per cent., the aggregate sum paid in dividends during the latter year was only \$95,575,976, being \$6,455,458, or $6\frac{1}{2}$ per cent., less than during the former. This did not result from a transformation in the form of capitalization, though the percentage of funded debt to total capital is somewhat larger at present than in 1882, for stock capital increased over 30 per cent. in the same period. It is obvious that so great a reduction in the average amount of interest paid on bonds could not be contemporaneous with a reduction in dividends, as the uncertainty of return indicated by the latter would naturally tend to increase the rate of interest demanded. Some decrease, however, has taken place, as is shown by the fact that an increase of 72 per cent. in the aggregate of funded debt from 1882 to 1893 was accompanied by an increase of but 55 per cent. in the amount of interest paid. During 1871 railway dividends throughout the United States averaged \$1,265 per mile of line operated; this average has steadily declined to \$988 in 1881, \$565 in 1891, and \$557 in 1894. During the year ending June 30, 1894, railway stock having a par value of \$3,660,150,094, or $63\frac{1}{2}$ per cent. of the total, received no dividend,—a larger amount, both actually and relatively, than during any year since the Interstate Commerce Law was passed. In the same year no interest was paid on 14 per cent. of all mortgage bonds, 12 per cent. of miscellaneous obligations, and 87 per cent. of income bonds. On the same date 192 railway companies, operating more than 42,000 miles of line and representing one-fourth

of the total railway capitalization, were in the hands of receivers. During the three years ending December 31, 1894, receivers were appointed for railways having a total length of 46,873 miles, capitalized at \$2,534,529,000; and 9,178 miles, capitalized at \$494,821,000, were sold under foreclosure. From January 1 to July 1 of the present year these totals were increased by 2,409 miles, capitalized at \$149,615,000, and 2,396 miles, capitalized at \$100,941,000, which, respectively, went into the hands of receivers and were sold under foreclosure. According to the preliminary report of the statistician of the Interstate Commerce Commission for the year ending June 30, 1894, the income of the railways in a section including 52 per cent. of the area of the country did not produce enough above the actual cost of operation to pay their fixed charges during that year.

These statistics of decreasing returns to investors, financial disaster, and widespread insolvency clearly indicate that the present railway charges are not too high, unless it is desirable to reduce all railway corporations to a condition of uniform and hopeless bankruptcy, even if they do not demonstrate, as might be urged with some evidence of justification, that the returns now produced by railway rates are actually lower than is reasonable and just.

There is no public interest which demands that railway rates shall be so low as to be unremunerative. Too low charges invariably result in the speedy impairment of railway service through the deterioration of road-bed and equipment and the reduction of the efficiency of the safeguards against accident usually provided, thus increasing the danger to person and property. The expenses due directly to handling traffic and moving trains are much less elastic than those incurred for keeping up the quality of track, rolling stock, and signaling apparatus; and, when depleted revenues enforce upon railway managers the necessity of immediate retrenchment, the latter are most likely to suffer. Thus, when, during 1894, reduced traffic, low rates, and dwindling earnings required a reduction of 93,994, or nearly 11 per cent., in the

number of men employed by the railways, nearly one-third of the entire number was taken from trackmen, their number being reduced 16 1-3 per cent. The decrease in the number of employes assigned to the maintenance of way and structures was 16 per cent.; in those assigned to maintenance of equipment, 13 1-3 per cent.; while in those assigned to the work of conducting transportation it was only 8 per cent. During the same year the expenses of operation were reduced 11 2-3 per cent. as compared with the previous year. Of the total decrease of \$96,506,977, 51 per cent. was taken from the expenditures incident to the maintenance of way, structures, and equipment, though these combined ordinarily constitute only about 37 per cent. of the total expense of operation.

Though expedients like the foregoing will frequently be resorted to, and interest and dividends paid by reducing the quality of the service rendered, they are merely temporary and generally extravagant, as physical deterioration soon reaches a point beyond which it may not be allowed to go, and final restoration is then found to cost much more than the total of the amounts which should have been regularly expended for maintenance. Unless revenues can be increased, the cost of such restoration must be taken from the return to investors, or met by new loans, and bankruptcy is the usual and natural result.

The frequent failure of railway enterprises to prove remunerative results in enhanced difficulty attending efforts to secure capital for the construction of new and often much needed lines, and in the exaction of conditions which afford at least a chance of extraordinary profits as an offset for what is regarded as the extra-hazardous nature of the investment. This opportunity for large returns very often takes the form of an excessive discount on the securities offered, or—what is much the same thing—a large stock bonus to accompany sales of bonds, these being among the most frequently deprecated methods of “stock-watering.”

Practically, it may be declared that the public, considered as distinct from railway owners, must finally pay for all the

entire distance being 1,340 miles. In contrast with this, the longest route, involving a haul of 2,051 miles, is by way of Buffalo, New Haven, Indiana, St Louis, and Texarkana. Estimating the cost of running a train these distances at the average cost per train-mile given by the statistician of the Interstate Commerce Commission in his latest annual report, the cost for the shorter distance is \$1,431 and for the longer \$2,190—an excess over the minimum of necessary expenditure, for each trainload carried over the longer route, of \$759, or 53 per cent. This illustration is fairly typical of the entire system of competitive railway transportation. While it may be true that the shortest is not necessarily the cheapest route, it cannot be doubted that a considerable saving would accrue from forwarding all traffic over whatever routes should be found, after careful experiment, to be the cheapest; but this can never be fully accomplished until the ruinous competition of to-day is restricted.

Competitive train service, both passenger and freight, is also a fruitful source of extravagant expenditure, which is not accompanied by any corresponding increase in the accommodations offered the traveling and shipping public. The cost of moving a passenger train from Chicago to Omaha at the average cost per passenger train mile for the roads operating between those points reported by the Interstate Commerce Commission is \$423, and, if this number could be reduced one-half, which appears by no means impossible, the annual saving would amount to \$1,499,958.

Very similar causes result in a failure to utilize rolling stock equipment to anything like its full capacity. The amounts wasted in the construction of cars and locomotives that would be unnecessary if rolling stock were used to its full capacity can scarcely be estimated. That it is considerable is as evident as that the practice of light loading is the direct result of competition.

Railway managers have attempted in many ways the abolition or adequate restriction of competition, but no method ever devised, short of actual consolidation, has proved as ef-

fective and satisfactory as that somewhat erroneously termed "pooling." Against this custom, when it existed, was directed much popular antipathy, which was fostered and encouraged by every demagogue who saw advantage to his personal interests in availing himself of the strength of an unreasoning prejudice, and it has been forbidden by State and national legislation; but it is now coming to be universally recognized that evidence justifying such popular distrust and suspicion is wholly wanting.

The Railway Problem.

BY HON. LLOYD BRYCE.

In view of the fresh attack against trusts in the State of New York and the indication of repressive legislation against them a study of the railroads becomes especially valuable just now. They offer the most complete object lesson in connection with legislation we possess, and a calm, unimpassioned review of their past and present condition may serve, if not to check, at least to direct governmental interference along such lines of reform as are least hazardous to all concerned. Being in no wise an authority on the subject, I desire to state that I have availed myself of the co-operation and the assistance of the best experts and statisticians in the presentation of this statement.

Liberal facilities, rapid, safe, and reasonable transportation with equality in rates for all, are great demands of the times. In answer to these demands the Interstate Commerce Law was passed about ten years ago. It is generally conceded that we have secured cheap transportation—the cheapest in the world. Only a few days ago Edward Atkinson demonstrated that the improvement in our railway service enables the people to move food, fuel, fibers and fabrics at one-third the former charge; that a charge of \$31.41 per head for this purpose had been reduced to \$10.47, thereby effecting a saving to the entire nation of a fraction under fifteen hundred million dollars in a single year. In some quarters the charge has been made that railway rates have not been reduced to keep pace with falling prices, especially of agricultural products. This illusion is dispelled by official figures which show that between 1873 and the present time the general ton-mile rate for the United States has fallen nearly 60 per cent.; that

the lake and rail rate on wheat from Chicago to New York has fallen at least 75 per cent., and the all-rail rate not far short of 65 per cent. On corn the fall has been 62½ per cent., and on provisions fully 50 per cent.

Here we have good evidence of reduction of freight rates for the people of the country generally and the agricultural interests in particular. In the following table is given the average charge for carrying one ton of freight one mile on thirteen of the important railways of the United States:

Charge per ton per mile.		Charge per ton per mile.	
Year.	Cents.	Year.	Cents.
1865	3.08	1890	0.77
1870	1.81	1893	0.76
1875	1.36	1894	0.74
1880	1.01	1895	0.72
1885	0.83	1896	Less than in 1895.

The above railways performed about one-third of the entire freight transportation and we find that seven and one-fifth mills, or probably at the present moment seven mills, will pay for as much transportation over their lines as could have been obtained thirty years ago for over three cents. Nor do these averages give an adequate idea of railway progress in cheap transportation. Much of the freight on our great trunk lines is carried at half a cent per ton per mile, which means the transportation of one ton of freight two hundred miles for one dollar. Indeed, the Pennsylvania Railroad in 1895 reported that it carried 8,173,218,403 tons of freight one mile, at the rate of five and six-tenths mills per ton per mile. Is it surprising that it is generally conceded by those conversant with the subject that "nothing like it in the history and development of the human race has been known?"

A glance at the passenger barometer likewise shows a decline, though the constant demands of the American public for better and more expensive accommodation and higher speed makes the decrease less marked. The average passenger rate has fallen from over three cents per mile in 1870 to less

than two cents in 1894; in round figures, say a reduction of one-third. Relatively speaking, our passenger rates are lower when compared with those of foreign countries—much lower when density of population and the character of accommodation are considered. In England, for example, the third class, or Parliamentary trains, carry passengers for a penny a mile—that is, an English penny, or two cents American money. The cost of first-class traveling in England, with a population of 541 to the square mile, will average double this, while ninety-nine per cent. of the people in the United States, population to the square mile only 21.31, travel first-class at an average cost, including the unsettled areas of the country, where population is less than three to the square mile, for two cents per mile.

Unless the decline in receipts is stopped, wages must be reduced, facilities must be curtailed and forces of employes lessened. Taking an army of two hundred and fifty thousand men out of active employment in one occupation is a pretty serious business. That means an annual loss in wages alone of not less than \$187,500,000. Here we have the direct loss. The indirect loss comes from the irreparable injury to the properties by reason of not keeping them up, ultimately entailing additional losses. The reduction of rates between 1890 and 1895 represents a loss of revenue of over \$100,000,000—\$15,500,000 in passenger traffic and \$87,000,000 in freight traffic. This presents the thought, can the people afford to force an industry in which nearly one-fifth or twenty per cent. of the total wealth of the country is invested to a point where so much of the original investment pays nothing in dividend and interest? The loss of dividends and interest on bonds brings hardship to hundreds of thousands of people of limited means who have invested in these securities. This is no less severe than the loss of work and wages to the laborer. The latest report shows that 70 per cent. or over two-thirds (an aggregate of nearly \$6,500,000,000) of all the outstanding stock of these corporations paid nothing in 1895. The same is true of 17 per cent. of the bonds. A careful study of these railway budgets would bring out the appalling fact that probably half

of these investments are non-productive—certainly five thousand millions of them.

It is important both to the commercial and investing world and to the people of the country that these investments should earn a reasonable income from the actual investment. I use the term actual because the companies seek no dividends for watered stock. They are content to earn a reasonable profit on what it cost to build the roads originally with profit and interest on subsequent betterments and improvements. It must be borne in mind as to water in railway capitalization, that while it may have been true originally in special cases, it is not true of the railways generally, because the original cash cost of the railways does not by any means represent the final cash cost in their present condition. To prove this, it is only necessary to take the construction accounts which have been paid in cash for years past on the various railroads, and add this to the original cost. Another standpoint from which to look at this is that the great majority of the railroads in the United States have been sold under foreclosure, and have had issued upon them at each foreclosure less and less interest-bearing securities, for no other reason than that the properties had been unable to earn the interest on the former indebtedness. Nearly all of the preferred stocks and a very large proportion of the common stocks of the railroads of the country to-day, have been issued in the place of securities which theretofore were interest bearing and represented cash, and the new stocks have been accepted by the present holders solely on the ground that the old fixed charges could not be earned and paid, and that the stocks merely represented ownership which should receive returns only in case they could be earned*.

While the mileage of our railways has been multiplied by 300 per cent. since 1872, the dividend on the investment has increased only 32 per cent. As a result, the investing public,

* The reports of the Interstate Commerce Commission showing the millions in stocks and bonds which have been cancelled, written off to profit and loss, will astonish those who talk about "watered stock," if they will only take the trouble to look into the subject before making assertions.

both at home and abroad, will not take these securities. If our railways could secure stable and reasonable rates, and railway wars be stopped, the favorite investment for European capitalists would be American railway securities. Such a result, as has been well said, would start a flow of money to the United States, and give a new impetus to every kind of trade.

And now a word on the cost of transportation. A careful computation by leading experts shows that in thirteen years there has been a decline of 27 per cent. in the price of transportation. That is, railways, as a whole, are now receiving less than three-quarters of what they received thirteen years ago, while yearly the demand for additional facilities has increased. Has there been a similar decline on the raw material out of which transportation is manufactured? Not at all. In the first place, 60 per cent., or \$60 of every \$100 paid out, is paid direct for labor.

The cost of labor is the same now as then. In fact, the price of labor, unlike the railways themselves, is no longer a market price, established by competition, in which one man competes with another until low wages face them both. The competitive conditions, therefore, are ameliorated by organization, by agreements between themselves, that below a certain wage they will not offer their services. If anything, the price, then, of 60 per cent. of the raw material used in the manufacture of transportation has advanced. Of what does the 40 per cent. consist? Of materials such as fuel, steel rails, ties, car-wheels, bolts, spikes, and lumber. Into all these products labor largely enters and comprises the indirect labor of railways. Some articles are cheaper, but taken as a whole the cost of running these roads has not been reduced, except in cases where men have been absolutely laid off, who should have been employed in order to keep the properties in good condition.

The history of our country shows that unremunerative railway rates destroy prosperity and threaten public welfare. It is a mistake to suppose that this demoralization falls only upon the capitalist. It affects everyone, including even those

who clamor loudest against the railways The ills arising from unremunerative railway rates injure, first of all, the workman, as he is thrown out of employment or his wages reduced. It injures, in fact, over one million railway employes, or persons directly employed by our vast system of transportation, and affects the comfort and happiness of 4,000,000 human beings. Then come the hundreds of thousands who have invested in railway securities, from whom, in many cases, it takes away the income on which they live. This reduces general consumption. Again, it reduces the ability of large holders of these stocks and bonds to engage in new enterprises, because it wipes out their value and destroys so much live capital—or rather destroys securities upon which capital could be borrowed. The co-related or allied industries follow. Further reduction of rates cannot be made without reducing the wages of labor. When railways are prosperous and remunerative, millions are expended in new equipments, improvements of plant, and betterments all along the road. And lastly, it may be said, all trade and industry, wherever railways penetrate, are injuriously affected, and it is this last wave of the enlarging circle of distress that is most severely felt.

In a problem so vast as this, and covering such a wide range of interest, the general welfare of the country must be considered and not the advantage of the few. Those who want the whole railway question to revolve around their State, their city, their farm, their store, their mine, or their manufactory must ultimately come to grief. Unhappily, too much State legislation has been guided by this spirit. The individual gain by competition which put down prices to unremunerative points must be paid for by the people. Hence, while we have cheap transportation we have no equality in rates, because business is demoralized and property confiscated. In the breaking down of business honesty and lawful trade the country suffers. One of the most judicial administrators of the Interstate Commerce Law has shown us that it is a superficial view of the subject which holds that the public interest always requires the lowest rates or which believes that reduc-

tions in rates are even presumptively for the public welfare. What the public really needs is the persistent maintenance of efficient, safe and reasonable transportation service, with rates properly adjusted, as between competitive points of production and consumption, always free from individual discrimination and steadily permanent from year to year.

How to reach this ideal condition is a question that is perplexing statesmen and causing anxiety in railway circles. The railways themselves put their case, or perhaps I should say their grievances, briefly as follows:

1. Increased and unfair taxation.
2. A demand for physical improvements that cost enormously and give no return for the capital invested.
3. Legal restrictions that, if lived up to by all, would result in ruin to some and undue advantage to others; consequently, the laws are not enforced and the railroads are placed in the position of being law-breakers.
4. An over-supply of railroads which entails excessive competition and renders possible (if, indeed, not necessary) a compliance with the demand that railroads become "geographical equalizers," and which, when taken in connection with the present development of civilization, seems to force large aggregations of capital, permitting such aggregations, through competition, to demand and secure unfair discrimination in their behalf.

A glance at the individual accounts of railroads brings to light remarkable freaks of direct taxation, in certain roads reaching 20 per cent., or one-fifth, of the net earnings. For some reason the Interstate Commerce Commission makes no mention, by itself, of railway taxation, a serious omission in what are otherwise complete and satisfactory reports. This omission makes an over-statement of about \$40,000,000 annually in the net earnings of railways, and is therefore misleading. In a recent memorial of the Atchison Topeka & Santa Fe Railway Company to the Legislature of the State of Kansas, it was shown that out of every dollar the Santa Fe earned in Kansas, it paid back at once about 70 cents for labor and

supplies and about 8 cents more for taxes. In 1895, the net earnings in Kansas were about \$1,800,000, out of which about \$800,000 was paid for Kansas taxes. Surely the representatives of the Santa Fe were justified in asking what other industry or business in the State was taxed 44 per cent. of its income. A similar memorial addressed to the Missouri Legislature last month by the Chicago Burlington & Quincy Railroad brought out the fact that out of an annual business of \$30,000,000, \$21,000,000 was used right in the State in expenses. These are but typical cases; many others could be given showing the innumerable burdens placed upon these properties by State legislators.

The present difficulty seems to lie in the fact that State legislatures are not only inclined to pass laws still further reducing the rates of transportation, but there is a strong tendency to increase not only the direct but the indirect taxation of railways. Coming, as it does, at a time when, as I have shown, a condition of affairs exists almost beyond control of the railways, involving reduction of rates and of earning capacity, it is even more serious than it would be during more prosperous times. By "indirect taxation" I mean doing away with grade crossings, the requirement of improved terminal facilities, additional watchmen, and other demands for the benefit and safety of the public—demands just and right in themselves, and easily attainable with a remunerative rate of transportation, but which become burdensome under extremely low and unprofitable rates.

Among the remedies proposed are joint ownership, more rigid economy, consolidation of management, State ownership, the legalization of freedom of contract between railways, including right to divide business and lessening expenses at competitive points. There is undoubtedly a tendency of late years to joint ownership and consolidation of interests, and, as a rule, these changes have not been detrimental to the shippers, the public, and the railways. It has been truly urged that no combination of carriers, whether formed in evasion of existing law, organized under legal pooling, can be more powerful or

alarming than actual consolidation. And yet the experience has accomplished an acknowledged fact that consolidation has not resulted in any increase of charges; but, on the contrary, has been attended by considerable reductions in rates and improved facilities, and the better accommodation of the public.

That all the great railways are practicing economy, and equipping, as far as income will justify, for the keener competition, must be admitted by those who have even studied the question superficially.

The question of State ownership, as yet, is hardly discussed in the United States. Those who oppose it take the ground that government ownership will not reduce rates, but that it will deaden invention and initiative. The railway systems of this country and England are undeniably better examples of what private enterprise can do than those who favor State ownership can point to as illustrating government control. In efficiency the advocates of private enterprises have the best of the argument. In the United States the railways run a train thirteen miles annually for every man, woman and child. In England the figure is eight, in Germany four and one-half, in Belgium three and one-half. In Australia, where public control and ownership is absolute, where the roads are operated by the same race as our own, they have not yet run trains at a speed equal to eight hours' time between New York and Boston. This affords, it seems to me, a reliable indication of the probable efficiency of State-owned railways. This plan offers but few attractions and many obstacles. To adopt it means to throw away more that is good than could possibly be gained.

The national legislation inaugurated ten years ago is admittedly in the right direction and in its extension and perfection may be found the best way out of the difficulty. The ship may be leaking, but that is no reason why we should scuttle her in mid-ocean, or turn back when there is a fair chance to reach the port we started for. The railway companies of the country recognize the usefulness of the Interstate Commerce Commission and have aided the commissioners in the enforcement of the law. If it had not been for the fatal experi-

ment known as the "anti-pooling" section of the law of 1887, the work of the commission would have been far more effectual, the railway problem much nearer solution than it is to-day, and equality of rates between large and small shippers much nearer accomplishment. The Interstate Commerce Law, in asserting and insisting that rates shall be reasonable, that there shall be no unjust discrimination, moved along the line of sound principles. In all these provisions the commission has had the support of the railway interests, or it would not have achieved its present success. To this extent, in matters relating to the publicity of rates, of the returns for statistical purposes and other provisions, the work of the commission has been successful. The section of the Interstate Commerce Bill which destroyed the freedom of contract with the common carrier was based on no principle, imbedded in no common law and antagonized the best experience. That section was an experiment, an experiment of which its author, Judge Reagan, now says:

"Further study has caused me to believe that the section may be amended so as to benefit both the railroads and the people by allowing the railroads to enter into traffic arrangements with one another."

The State Commissioners of Railways, at a convention in Washington in 1894, adopted a resolution of similar import:

"Resolved, That it is the sense of this convention that competing common carriers may safely be permitted to make lawful contracts with each other for the apportionment of competitive traffic or the earnings therefrom; provided that conditions and restrictions be imposed which protect the public from excessive and unreasonable charges."

It has been fully established that under the present act unjust discrimination on the part of common carriers is more flagrant and more hurtful, because more secret and insidious, than formerly, and results more detrimentally alike to people, to shippers and to the railroads. If all the railroad companies charged according to their published rates there would be no trouble, but the tell-tale earnings and increasing cost of com-

missions and enormous amounts paid for soliciting business tell the story so plainly that even Judge Reagan thinks his favorite section five (which helped to do the mischief) may be amended. The proposed law would remedy much of this. The railways would be benefited in a large class of expenses, which they are now obliged to maintain through being unable to unify and concentrate their business. Not only will the railways be satisfied with this, but the shippers who seek no individual advantage. At the annual meeting of the National Board of Trade held in Washington, January 1897, an important report of the Committee on Railroad Transportation was adopted, looking to a remedy through the medium of the Interstate Commerce Commission. Among others things this report says:

"That the great majority of railroad managers and of shippers on railroads are sincerely desirous of remedying these unjust discriminations there can be no doubt; and, with the co-operation of this majority with the Interstate Commerce Commission, it would seem that they might be gradually eliminated, but, as a condition necessary thereto, railroads must be given the power to enforce their agreements upon each other, which they are now prohibited from doing by the prohibition of pooling in the Interstate Commerce Law. This law should be so amended that pooling under the authority and supervision of the Interstate Commerce Commission should be allowed."

The Interstate Commerce Commission has accomplished a good work, and it would seem to be wise to continue in the same direction. And the idea is emphasized, by reason of the fact that the railways, the representatives of the shippers, the officials of States having charge of railway matters, and the commission itself are substantially in accord on this point. There may be differences of detail but the bill to amend the Interstate Commerce Law now before Congress meets with the approval of nearly all conflicting interests. This proposed measure is practically the Patterson Bill, which passed Congress by a large majority and was approved by the committee

in the Senate two years ago. It was subsequently reported by the Interstate Commerce Committee of the Senate, but never reached a vote, on account of pressure of other business and a short session. The bill is in the interest of the public, the shipper, the railway employe, and the railway. It will also strengthen in many ways and make more effectual the work of the Interstate Commerce Commission. The public and the shippers will have a uniform, just rate, which will not discriminate against the smaller shippers and which cannot in any way become extortionate or unjust under the protection afforded by the bill. The railways, should this bill become a law, will thereunder obtain merely the lawful schedule rate, something they have not been able to maintain under the present law, because that rate is constantly fluctuating and generally in the interest of large shippers alone.

Few realize that one mill or one-tenth of one cent per ton per mile additional upon the tonnage of 1895 would have yielded over \$80,000,000 additional income. Thus the infinitesimal fraction of a dollar, the mill, is all that stands between the prosperity and insolvency of railways. That extra mill would give employment to 200,000 day laborers for twelve months, as they are badly needed on the tracks and road-beds, in the yards, and shops of our great railways. It would have given food and raiment to 800,000 human beings in all parts of the country during the year. The saving of that mill merely added to the millions of some of the great individual shippers. The farmer received no benefit from it, for his product must go through the temple bar of a shipper with "a rate." The small shipper gained nothing, for he paid the "schedule rate." It is important for the public to realize that it would have been far better to have entrusted this mill to the railways, not for safe keeping, but because they are the great distributors, not only of freight and passengers, but of money. Whether it be one mill or two, the railways must earn enough to enable them to keep pace with the times in furnishing all facilities to the public and carry on needed improvements upon the property.

As to what are just and reasonable rates on all compet-

itive business, that would, under the proposed law, be subject to review by the Interstate Commerce Commission and by the courts. This would seem to be just and reasonable and a law which permits of an agreement for the purpose of maintaining fair and reasonable prices and of paying a living wage cannot be contrary to public policy. In fact, the measure should be so framed as to protect the public and the shipper against high rates and enable the railway companies to get the schedule rate to all. Our railways are entitled to a net earning that will put them on a solvent basis, open up the workshops and give employment to a larger number of men. In short, the railways want, as a popular president of a great system remarked the other day, "common justice and that of the commonest sort."

The Plight of the Railways.

BY ROBERT P. PORTER.

The latest general balance sheet of the railways of the United States gives us a total valuation of railway property close to twelve thousand millions of dollars, and over one hundred and eighty thousand miles of road. Next to our farms, which aggregate thirteen thousand millions, these great properties will form, at the close of the century, the most valuable assets of the republic. The capital invested in our manufactures is less than half that invested in railways, and yet the condition of our manufactures, if we may judge from the frequent tariff agitation, seems to command much more public attention. The construction of these great systems of transportation has played an important part, if not the most important part, in the progress of the nation during the last half century. By the extension of these railways, population has been distributed, large areas of country have been opened to cultivation, cities built, manufactures established, mines developed, foreign trade increased, and the varied products of our vast domain brought from tropical and frigid zones to the temperate region of densest population. In short, the laying of the track and the penetration of the locomotive have kept time with the building of the nation itself.

Within the last few weeks the Ways and Means Committee of Congress have granted hearings at Washington to those representing our several industries. In reading the published testimony, one is struck with the deplorable accounts given of the condition of many branches of manufacture. Low tariff and cheap foreign labor have played havoc with American labor and production. This is undoubtedly true. And the remedy asked for is increased protection. A duty sufficient to en-

able the American manufacturer to pay a living wage and compete with his foreign rivals. While not occupying the public mind to anything like the extent of the manufacturer, the American railroad is in as bad if not in a worse plight. If Congress would only extend its hearings to railways, the stories of recent tariff hearings could be repeated with emphasis on a larger and even more impressive scale. Loss of earnings, reduction of rates below the paying point, actual loss on passenger traffic, deterioration of roadbed, reduction in the number of employes, others working half time, receiverships, foreclosure sales, practically half of this enormous investment bringing no returns, and the blight of insolvency steadily settling down upon our entire system.

The losses and disasters arising from these conditions have been widespread and far-reaching. In the first place, it is undoubtedly true that in no other industry is so large a business carried on upon so small a banking account. A railway company is a great distributor, not only of passengers and freight, but of money. As fast as its earnings come in, they go out again. First, we have the army of direct employes, which reached nearly eight hundred and seventy-five thousand a few years ago, but which has been reduced fully one hundred thousand. With continued prosperity, our railway system would have to-day furnished direct employment to at least one million employes. This, however, gives but an imperfect idea of the number employed indirectly, that is, in car shops and locomotive works, and equipment shops of all kinds, blast furnaces, rail mills, and a myriad industries dependent upon the railways for their prosperity. As the percentage of increase in equipment has been reduced from 10 per cent. in 1890, to an actual decrease in 1895, it may be safely assumed that thousands indirectly engaged have been thrown out of employment. A perusal of the statistics of railways as compiled by the United States Government shows conclusively that under existing conditions most of our railways are running behind, and the few that are apparently holding their own are far from hopeful for the future. Economical management is one thing,

but forced economies can only result in a deterioration of the property. For a few years some of our older railways can thus economize, but it is only by continued and liberal expenditure of money, that track, roadbed, bridges, equipment and rolling stock can be kept up-to-date and in good running order. The loss to labor has been enormous, and it is important that railway employes of all grades should study this side of the question. With freight and passenger rates less than those of European countries, where labor is paid about half the American rates, how long will our railways be able to tide along with reduced forces and three-quarter time? Unless the decline in receipts is stopped, wages must be reduced, and then the trouble will begin. Taking an army of 200,000 men out of active employment in one occupation is a pretty serious business. That means an annual loss in wages alone of not less than \$150,000,000. Here we have the direct loss. The indirect loss comes from the irreparable injury to the properties by reason of not keeping them up, ultimately entailing additional losses. The reduction of rates between 1890 and 1895 represents a loss of revenue of over \$100,000,000—\$15,500,000 in passenger traffic and \$87,000,000 in freight traffic. Of course, this sum was remitted to the people of the United States, but the question is, can the people afford to force an industry in which nearly one-fifth or 20 per cent. of the total wealth of the country is invested to a point where nearly half the stock and bonds pay nothing in dividend and interest, and the current expenses must be reduced below the safety point? This is the problem the people will soon have to face in relation to our railways. Should we carry these facts back to 1887, we have a loss to the railways of about \$150,000,000. That is, if the same rate for passengers and for freight existed in 1895 as in 1887, the receipts from these two sources would have been that much in excess of what they actually were in 1895. I am officially informed that freight rates for 1896 will average even lower than in 1895. The loss of dividends and of interest on bonds brings hardships to hundreds of thousands of people of limited means who have invested in these securities. This is no less severe

than the loss of work and wages to the laborer. The latest report shows that 70 per cent., or over two-thirds (an aggregate of nearly \$3,500,000,000) of all the outstanding stock of these corporations paid nothing in 1895. The same is true of 17 per cent. of the bonds. A careful study of these railway budgets would bring out the appalling fact that probably half of these investments are non-productive—certainly five thousand millions of them. The gloomy list of non-dividend-paying stocks has of late years been gaining from about 60 per cent. ten years ago to upward of 70 per cent. now. While this decrease of rates has been going on the cost of running trains has not similarly decreased, and herein lies the danger. In commenting on this, H. T. Newcomb, of the United States Agricultural Department, says, in an admirable article in the *Journal of the American Statistical Association*:

“These statistics of decreasing returns to investors, financial disaster, and widespread insolvency clearly indicate that the present railway charges are not too high, unless it is desirable to reduce all railway corporations to a uniform condition of hopeless bankruptcy. There is no public interest which demands that railway charges shall be so low as to be unremunerative. Too low charges invariably result in the speedy impairment of railway service through the physical deterioration of roadbed and equipment, and the reduction of the efficiency of the safeguards against accident usually provided, thus materially increasing the danger to life and property. The expenses due to handling traffic and moving trains are much less elastic than those incurred for keeping up the quality of track, rolling stock, and signaling apparatus, and when depleted revenues enforce upon railway managers the necessity of immediate retrenchment the latter are most likely to suffer.”

The Interstate Commerce Commission statistics show that this is just what did happen, and that in one year of great retrenchment over 51 per cent. of the reductions were taken from expenditures incident to the maintenance of way, structures and equipments, though these combined constituted less than 37 per cent. of the total cost of operation.

The following table shows clearly that rates are being steadily reduced:

Year.	Revenue passenger per mile.	Revenue per ton of freight per mile.
1890.....	2.167	.941
1891.....	2.142	.895
1892.....	2.126	.898
1893.....	2.108	.878
1894.....	1.986	.860
1895.....	2.040	.839

And a further reduction for 1896.

With the exception of 1894 passenger rates reached their lowest in 1895, while freight rates, save a small rally in 1892, are steadily coming down. When compared with foreign countries, our rates are indeed low. It is said that if the Pennsylvania Railroad Company could secure the same rates as the London & Northwestern Company, the annual earnings would be increased \$12,000,000. Mr. George R. Blanchard, in his recent testimony before the Interstate Commerce Committee of the Senate, said that had our railways collected the lowest of the European charges, we would have received \$370,000,000 more than we did receive. This calculation was based on the figures of 1892. The figures of 1896, which are lower for the United States, would make a great difference.

The impartial student of these data must be struck with the necessity of commercial as well as industrial reconstruction. The census reports of 1880 and 1890 and the statistics of the Interstate Commerce Commission, all of which are uniform, together with the valuable reports of H. V. Poor, give us material on which to base a thorough inquiry. The presidents and other officers who have charge of these great properties should be accorded the same opportunity to be heard as the manufacturing industries. So far as I can learn, there is no desire on the part of the railway managers to generally raise rates. There is, however, a widespread belief that rock bottom prices have been reached, and that anything, even the merest shade lower, will be absolutely ruinous. The people of the United States,

including the million who should be directly engaged in transportation, the shippers and manufacturers, might as well realize now as when destruction has set in, that our railway system cannot lose another \$150,000,000 of income in ten years—an average of \$15,000,000 per annum—without sweeping down with it the very interests which sustain these roads. The fact is, another twist or so in the downward direction will simply kill the goose that lays the golden eggs. When the revenues of railways are insufficient to keep up the properties, to pay the legitimate interest, to give even a small return on the stock, to pay American wages to the employes, to give employment to an increasing number of people instead of to a lesser number, allied industries must languish. And the industries dependent upon railways are numerous and take a wide range.

The case against the railways is a familiar one. Those who realize these new conditions have no excuses or apologies for past mismanagement, nor for the methods by which some of these roads were built. Whatever may be said of those who built railways far in advance of population, or for purposes other than legitimate trade, we have, on the other hand, equally to blame, the cities and towns and counties and individuals who were ready to mortgage the future to help along the work. In a large measure the wind and the water and the fraud have been squeezed out of these properties. In their place new and honestly acquired capital in the shape of enforced loans from bondholders and forced assessment of stockholders has been invested. Foreclosures, the sheriff, and the courts have wiped out much of the inflated values and new capital with reorganization for business purposes has followed. Surely no one will deny that the consolidations and changes, say of the last decade, have been beneficial. There is more uniform action than ever before. Better business principles prevail. The public have never been so well and so cheaply served as now. Considering the hard times, the discharges, the reduced time, there has never existed better feeling between the railway employe and the officers than at present. The loss of \$100,000,000 income in five years must have been a staggering blow. A continua-

tion of this sort of thing would simply destroy much of our wealth and arrest the progress of the Republic. It is important that the people of the United States should realize this situation. The facts herein brought out should be borne in mind in any discussion of the railway problem, whether for the purpose of State legislation, for the modification of our Interstate Commerce Act, or for the purpose of giving additional employment and more steady wages to the million that should be directly employed by our railway system, and to the additional hundreds of thousands who, under normal conditions, should be kept busy in the allied industries. To ignore these facts will work a great injury and place additional obstacles in the way of a return to prosperity.

Business Interests and the Pooling Bill.

BY ROBERT P. PORTER.

The Interstate Commerce Bill now before Congress is practically the Patterson Bill, which passed Congress by a large majority and was approved by the committee in the Senate two years ago. It was subsequently reported by the Interstate Commerce Committee of the Senate, but never reached a vote, on account of pressure of other business and a short session. The bill is in the interest of the public, the shipper, the railway employe and the railway. It will also strengthen in many ways and make more effectual the work of the Interstate Commerce Commission. The public and the shippers will have a uniform, just rate, which will not discriminate against the smaller shippers and which cannot in any way become extortionate or unjust under the protection afforded by the bill. The railways will thereunder obtain merely the lawful schedule rate, something they have not been able to maintain under the present law, because that rate is constantly fluctuating and generally in the interest of large shippers alone.

The importance of this legislation is second to no other measure before Congress. The railroads of the United States have not only had to bear their share of the loss of tonnage and passenger traffic due to the hard times and business depression, but have also suffered severely from reductions of rates for passenger and freight traffic, which, in the last five years, have resulted in a reduction of over \$100,000,000 of annual revenue, and which since the passage of the Interstate Commerce Law in 1887 have aggregated approximately double that amount. While the freight rate per ton per mile on the whole system has reached the small sum of 8.39 mills, some of the larger

systems receive less than 6 mills per ton per mile. Indeed it is safe to say that the bulk of freight is carried on the trunk roads at 5 mills per ton per mile. That is, our railways are to-day carrying one ton of freight 200 miles for one dollar. The wonder is how it is possible to do this and keep up roadbeds and equipment and exist? The answer is, they cannot. A large percentage of these roads are now in the hands of the court. A large part of the invested capital has been wiped out, the investing public demoralized and the number of employes reduced. As it now stands the solvency of the American railways is continuously threatened. Few will be strong enough to continue such business as this, and keep out of the receiver's hands.

Unless our railways are afforded the protection proposed in this law, many of these great properties will come to grief and hundreds of thousands of additional employes be thrown out of work, while others will suffer still further from reduced time and reduction of wages. It is not difficult to trace distinctly the results of the section of the law of 1887 which prevented the customary freedom of contract between common carriers, and to separate those results from the disasters which came from business depression. There are signs of recovery in the latter case, but the steadily decreasing rates and fares and reductions of income due to unreasonable and vicious strife and reprisals and consequent discrimination are cutting into the vitals of our railway system, and demonstrate that the main hope lies in the repeal or modification of the law which has failed to cure the evil.

It may be said that the central idea of the proposed interstate commerce legislation is to protect the constitutional freedom of contract. The bill contains other and important provisions that will aid the administration of the Interstate Commerce Law and its general tendency will be to increase the power of the commission and extend its usefulness. The railway companies of the country recognize the usefulness of that commission and have aided the commissioners in the enforcement of the law. If it had not been for the fatal experiment

known as the "anti-pooling" section of the law of 1887, the work of the commission would have been far more effectual, the railway problem much nearer solution than it is to-day, and the equality of rates as between large and small shippers much nearer accomplishment.

The Interstate Commerce Law in asserting and insisting that rates shall be reasonable, that there shall be no unjust discrimination, etc., moved along the line of sound principles. In all these provisions, the commission has had the support of the railway interests or it would not have achieved its present success. To this extent, in all matters relating to the publicity of rates, of the returns for statistical purposes, etc., the work of the commission has been successful. The section of the Interstate Commerce Bill which destroyed the freedom of contract between common carriers was based on no principle, imbedded in no common law, and antagonized the best experience. That section was an experiment.

An experiment was forced into the law by the pertinacity of one man. Judge Reagan of Texas started out early in the seventies to experiment with our railways, and his work has not only ended disastrously for the United States, but of late years for his own State of Texas, where 99.99 per cent. of all the railways are insolvent, and where the roads are operated by inadequate forces of employes because the roads cannot afford to pay more. His experiment with the United States was to deny the carrier the simple right of agreeing with his fellow-carrier as to the division which they should make of their competitive traffic. Practical railway men argued with the Judge. Statesmen pleaded, and showed that his theory was against the experience of England, of France, of Germany, of every place where there is a railroad. It was of no avail. Senator Platt of Connecticut delivered an address of great power against this experiment—an address which reads more like a prophecy to-day. Facts, reason, experience, argument and eloquence failed, and the experiment was forced into the law.

What has been the result? In a measure the failure of the

Interstate Commerce Law, because we thus injected into it the very thing that produced what the law aimed to prevent—competition between carriers. Competition which has resulted in discrimination, favoritism and preference.

The proposed bill simply puts the law where it ought to have been in 1887. It restores the freedom of contract under restrictions that would seem to be safe and wise. This the railway companies are willing to accept.

The establishment of the commercial device of freedom of contract to these companies is essential to produce no unjust discrimination. If there is a vague, undefined fear that freedom to divide traffic may produce unjust consequences, the railway companies are willing that the commission should be armed with all the powers necessary to protect public interests.

There are many reasons why this law should be changed. Judge Reagan, whose was absolutely the author of section five of the Interstate Commerce Law, declaring divisions of gross or net earnings illegal, has now modified his views. In a recent letter he says: "Further study has caused me to believe that the section may be amended, so as to benefit both the railroads and the people, by allowing the railroads to enter into traffic arrangements with one another."

The State Commissioners of Railways, at a convention in Washington in 1894, adopted this resolution:

"Resolved, That it is the sense of this Convention that competing common carriers may safely be permitted to make lawful contracts with each other for the apportionment of competitive traffic or the earnings therefrom; provided, that conditions and restrictions be imposed which protect the public from excessive and unreasonable charges."

The Patterson Bill when before Congress in 1894 received the indorsement of the Boards of Trade, many of the Chambers of Commerce and a large number of trade and business associations.

It has been fully established that under the present act unjust discrimination on the part of common carriers is more flagrant and more hurtful, because more secret and insidious

than formerly, and results more detrimentally alike to people, to shippers and to the railroads. If all the railway companies charged according to their published rates there would be no trouble, but the tell-tale earnings and increasing cost of commissions and enormous amounts paid for soliciting business tell the story so plainly that even Judge Reagan thinks his favorite section five (which did the mischief) may be amended. The proposed law would remedy much of this. The railways would be benefited in a large class of expenses which they are now obliged to maintain through being unable to unify and concentrate their business.

Judge Patterson, in a very able report in favor of his bill, in May, 1894, says:

"Each railroad company suspects every other and so it is that they all enter into the secret and nefarious business of cutting rates. Gain being the object, without regard to public welfare, the large shippers, whose patronage is great, secure low rates as an inducement, while the small shippers, whose patronage is not so desirable, are charged the published rates. The small shipper is charged the advertised rates, approved or permitted by the Interstate Commerce Commission, while the larger shipper secures a cut rate. This system throughout the country is gradually destroying the small and enriching the large shippers. No process could be devised which would more effectually contribute to making the few richer and the many poorer than this. It is the bane of small industries and individual enterprises throughout the country."

Judge Patterson's diagnosis is hardly exaggerated. Large shippers have taken advantage of the existing law to combine against the railways and destroy their smaller competitors. As a result we have had false billing, false classification, false weighing and myriad other devices for the shipment of goods at lower than the regular schedule rates. The Interstate Commerce Commission has apparently been as powerless as the railways seem to be to prevent these disturbing and and trade-demoralizing practices. The only possible way is to legalize these agreements and contracts between competing roads,

and thereby establish unity of rates and fair treatment for all shippers. The proposed measure would:

1. Prevent rate wars and secret cuts.
2. Railways would be forced to live up to their agreements.
3. Rebates and discrimination would be stopped.
4. There would be no motive to violate the law.
5. Certainty, publicity, and uniformity in the rates of transportation would be established.

6. Our railways would be saved from bankruptcy and foreclosures, and our small producers, manufacturers and merchants from severe losses.

7. Many of our railway systems, in order to maintain their fixed charges and meet other obligations of operation, have been obliged to curtail improvements upon the property. If they had received schedule rates under such a bill as proposed, vast improvements would have been inaugurated, and millions put in circulation through the artisans and mechanics who would have been employed.

8. Workshops, mills, locomotive shops, blast furnaces, car factories, steel rail plants and a thousand allied industries will be started up again and an era of prosperity set in once more.

9. And, finally, it would give the American railway system, representing, as it does, nearly one-fifth of the assets of the Republic, a chance. And a chance is all our railways want. The railways ask for no legislation to increase rates. On the contrary, they are contented with the present schedule rate, which, if uniformly observed, would solve the problem and bring prosperity to the railways and employment to hundreds of thousands. They seek no profits on inflated values. The question which confronts the railways to-day is whether they can earn a reasonable profit on what it would cost to reproduce these properties to-day or what it actually cost to build the roads originally with interest on subsequent betterments, improvements, etc. They, however, must earn enough to enable them to keep pace with the times in furnishing all facilities

to the public and carry on needed improvements upon the property. As to what are just and reasonable rates on all competitive business, that would, under the proposed law, be controlled by the Interstate Commerce Commission, which would have ample power to enforce rates made under it. This demand would seem to be just and reasonable, and a law which permits of an agreement for the purpose of maintaining fair and reasonable prices cannot be contrary to public policy.

The Scalping of Railroad Tickets.

BY GEORGE H. DANIELS.

I have been requested by several parties who are interested in the bills now under discussion, to lay before you a few of the reasons for asking legislation which will have the effect of confining the sale of railroad tickets in the State of New York to the properly authorized agents of the transportation companies, and prevent the sale or manipulation of such tickets by ticket scalpers or other unauthorized and irresponsible persons.

With your permission, I will, before proceeding with the argument, lay on the table for your inspection counterfeit tickets which have been honored for passage on the railroads of this State, including the Erie Railroad, Delaware Lackawanna & Western Railroad, Lehigh Valley Railroad, West Shore Railroad, New York Central & Hudson River Railroad, Delaware & Hudson Railroad, Rome Watertown & Ogdensburg Railroad, and other New York State lines, and representing a stock of counterfeit tickets, estimated by the general passenger agents of the above-named lines to exceed \$50,000, every one of which tickets was sold by ticket scalpers. A few of these tickets were sold and honored for passage in 1893, but most of them were sold and honored during the year 1896; and it is because of the enormous increase in the sale by scalpers of counterfeit, stolen and forged tickets within the past few years, that the transportation companies have taken up so earnestly the question of this legislation, in the hope that laws may be secured which will prevent these wholesale frauds.

In England and in all the countries of Continental Europe

there are no ticket scalpers, the laws providing that railway and steamship tickets shall only be sold by the properly authorized agents of the transportation companies, who are held to a strict accountability for every ticket sold and every act committed by such agents; it being held by the courts and legislative bodies of Europe that unauthorized persons have no more right to print and deal promiscuously in transportation tickets than they have to print and deal promiscuously in postage stamps or bank notes of the various governments.

The Dominion of Canada suffered for years from the dishonest practices of the ticket scalpers, until fifteen years ago, when a law was passed by the Canadian Parliament, restricting the sale of railroad tickets to the properly authorized agents of the companies, who are obliged, under that law, to exhibit a certificate of authority in the same manner as notaries public. Since the passage of this law there has never been a ticket scalper in the entire Dominion of Canada.

If men, who were believed to be in the business of altering or counterfeiting bank bills, or handling stolen or counterfeit money, should open offices in our principal cities and towns, to carry on their illegitimate business, we should at once move to put a stop to such practices, and, if necessary, petition the State Legislature and the Congress of the United States to pass laws to protect the public from such unauthorized and irresponsible handlers of money.

The dishonest railroad ticket scalper stands in the same relation to the railroads as the money handlers above referred to would to the regular banking institutions which have been established by law, are always subject to legal regulation and are responsible for every dollar that passes over their counters.

The ticket scalping offices have, in the language of the court, "Become a fruitful source of crime, and are found to be a 'fence' for the receipt of counterfeit and stolen tickets."

When a ticket office is robbed, we look at once into the scalping offices for the stolen tickets, and we invariably find them there.

If a dishonest employe steals railroad tickets, he sells them to a scalper. There is no other way to dispose of them.

If a man or a gang of men counterfeit railroad tickets, the market for such counterfeits is the ticket scalper's office, there being no other way to turn them into cash; and if there were no scalping offices there would be no incentive to either steal or counterfeit railroad tickets.

A claim is made by the ticket scalper that he is necessary as a middleman between the railroad and the public, to secure reduced rates for the latter, and that if it were not for his intervention the public would be unable to secure reductions. This claim is untrue; in fact, the presence of the ticket scalper is always a menace to a reduction in rates, is the cause of annoying restrictions placed upon reduced rates tickets and in very many cases prevents any reduction whatever. The truth of this statement will be attested by the secretary of every large society that holds an annual meeting in the State of New York.

Another claim of the ticket scalper is that he is necessary to the traveling man, in order that he can have a market for his unused tickets. This claim is also untrue and misleading. No such necessity exists. Every reputable railroad in the United States will redeem unused tickets, or portions of tickets of all classes, that are valid for passage over it, at their full value, and in strict accordance with the law in every State where there is a law on this subject; and in States where there are no laws obliging the railroad companies to redeem their tickets, they are redeemed in accordance with the rules of the company, which are founded upon the principle that where no service has been rendered, no revenue has been earned, and that a man who paid for his ticket and did not use it, is entitled to receive back his money. If he used a part of his ticket, he is entitled to receive back what he paid for it, less the regular fare for the portion used. A practical illustration of this rule is shown in the records of the New York Central for 1896. During that year we redeemed 24,372 tickets, ranging in amounts from four cents to \$20, the total amount paid

by the New York Central for tickets so redeemed in 1896 being \$31,772.23; and when it is understood that every railroad of any consequence in the country has rules similar to the New York Central, it will be clear to any fair-minded man that there is no necessity for the ticket scalper, or any other middleman, between the public and the railroads, to protect the interests of either; but while the railroads, in accordance with their rules, redeem at its full value every ticket that is valid for passage, there is no law to compel the ticket scalper to redeem tickets he sells, and it is well known to those who are familiar with the practices of these gentlemen, that they do not redeem their tickets, and that the unwary traveler who buys them has no redress.

The generally demoralizing, dishonest and disreputable character of the illegitimate business of ticket scalping is clearly set forth in the printed documents filed herewith, and which we desire to have form a part of the argument in favor of legislation which will at once and forever put a stop to, what the Interstate Commerce Commission call, this illegitimate and illicit traffic. The documents referred to are in part as follows:

"Extract from the Ninth Annual Report of the Interstate Commerce Commission, marked 'A.'

"Extract from the Tenth Annual Report of the Interstate Commerce Commission, marked 'B.'

"A pamphlet entitled 'What is Ticket Scalping?' marked 'C,' which contains opinions of the courts, the press and Interstate Commerce Commission; some circulars issued by ticket scalpers, showing their dishonest methods in their efforts to induce others to adopt dishonest practices; some sworn testimony of ticket scalpers themselves in a case before the Supreme Court of New York.

"The report of the Committee on Interstate and Foreign Commerce on House Bill 10,090, strongly recommending the passage of said bill, which had for its object the wiping out of the business of ticket scalping, marked 'D.'

"Circulars E, F, G, H, J, L, M, N and O, containing edi-

torials and leading articles favoring the passage of laws which will confine the sale of railroad tickets to the properly authorized agents of the transportation companies, and hold said companies to the strictest accountability for the acts of such agents; requiring the redemption of all unused or partly used tickets at their full value. Among the papers so indorsing this proposed legislation are:

Albany,	Times-Union.	New Orleans,	{ Times-
"	Argus.	"	{ Democrat.
"	Evening Journal.	New York,	Herald.
"	Express.	"	Sun.
Brooklyn,	Standard Union.	"	Times.
"	Citizen.	"	Tribune.
Buffalo,	Express.	"	Press.
"	Commercial.	"	Daily News.
"	Courier.	"	Morn'g Advertiser.
Black Rock,	Inter'l Gazette.	"	Journal of Com.
Boston,	Herald.	"	Mail and Express.
Chicago,	Tribune.	"	Evening Sun.
"	Times-Herald.	"	Com. Advertiser.
"	Inter-Ocean.	Nunda, N. Y.,	News.
"	Chronicle.	Perry, N. Y.,	Herald.
"	Evening Post.	Philadelphia,	Times.
"	Herald.	"	Evening Bulletin.
Canandaigua,	{ Ontario Co.	Rochester,	Union & Advertiser.
"	{ Journal.	"	Dem. & Chronicle.
Dunkirk, N. Y.,	Observer.	"	Catholic Journal.
Elgin, Ill.,	Every Saturday.	Rome,	Sentinel.
Gloversville, N. Y.	Leader.	"	Republican.
Gowanda, N. Y.,	Leader.	Schenectady,	Union.
Kansas City,	World.	Sing Sing,	Republican.
Louisville,	{ Courier-	St. Paul,	Pioneer Press.
"	{ Journal.	"	Dispatch.
Minneapolis,	Times.	Toledo,	Blade.
"	{ Southern Post	Utica,	Press.
Memphis,	{ Journal.	Washington,	Post.
		Watertown,	Times."

A concise answer to the question, "What is Railway Ticket Scalping?" has been given, as follows:

"The business of railway ticket scalping is a device for violating the Interstate Commerce Law.

"It affords a market for unpunched railroad tickets in the hands of dishonest conductors or others.

"It offers an inducement for persons charged with the handling of railroad tickets to sell them unlawfully for their own advantage.

"It furnishes a fence for lost, stolen and forged railway transportation.

"It offers a premium for forgery, the passenger who signs a name not his own on a railway ticket bought of a scalper being guilty of forgery every time he does it; and this is done many times every day in almost every city in the land.

"It makes many of the most reputable business men parties to the grossest violations of State and National criminal laws.

"It perpetrates the most glaring frauds upon unsuspecting travelers, who suppose they are dealing with the authorized agents of the railroads.

"It induced a boy in the office of a special agent of the Postoffice Department in Chicago to steal his employer's railroad passes and sell them to a scalper.

"It induced a boy in a railroad office in Cincinnati to steal railroad tickets and sell them to a scalper.

"The business of railway ticket scalping is, in the language of one of the judges of the Supreme Court, 'a fruitful source of crime.'

"It has been declared illegal and prohibited by law in the great States of Pennsylvania, New Jersey, Illinois, Indiana, Montana and Texas.

"It is prohibited and prevented by law in Canada, in England and in Europe."

From the records of the legal department of the New York Central I find that where ticket offices have been robbed, the stolen tickets have invariably been found in the ticket scalpers' offices. Recent examples of this character are as follows:

In 1891 the Newburgh ticket office was robbed and the tickets sold by New York scalpers.

In 1892 the Lockport ticket office was robbed and tickets were sold by Buffalo, Chicago and New York scalpers.

In 1893 the Suspension Bridge ticket office was robbed and tickets were sold by Buffalo scalpers.

In 1896 Rosendale ticket office was robbed and tickets sold by New York scalpers.

In 1891, 1892, 1894 and 1895 tickets stolen by employes were sold by scalpers in New York, Albany, Kingston and other points.

That forged tickets are handled regularly by scalpers in all parts of the country can readily be proved by the records of the legal departments of all the principal lines in the country.

The crying need for legislation to protect the traveling public, as well as the railroad companies, is emphasized by the discovery during the past year of wholesale ticket forgeries on six large systems of railways in the United States, the result of which was a very considerable loss, not only to the railroad companies, but to the general public, as the detection of such tickets in the hands of passengers resulted in the expulsion from the trains of 450 passengers on one system of railways alone, in six months, which will give some idea of the inconvenience and loss to which the general public was put, through the illegitimate traffic of the ticket scalper.

You will readily understand that counterfeit, stolen or other fraudulent tickets cannot be disposed of in this country except through the ticket scalping offices. No person would buy a railroad ticket of a man on the street corner, and it is only because these people have, in the absence of any law on the subject, been permitted to open offices, with regular ticket signs on the outside, ticket cases, ticket stamps and all the paraphernalia of a regular office on the inside, that they have been enabled to deceive the public and build up a traffic which however honest it may have been in its inception, has steadily degenerated during the past ten years.

A fair estimate of the character of the business of the ticket scalper of to-day may be obtained from a letter written by Mr. J. D. Miller, of the Miller Sidewalk Paving Company, Columbus, Ohio, and addressed to Congressman Hepburn, chairman of Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D. C., in which he stated that he was a member of the American Ticket Brokers' Association for ten years, and, becoming disgusted with the

crookedness in which the business had fallen, he voluntarily retired from it. He said that nine out of ten of the statements of Mr. McKenzie, who represented the ticket scalpers before the Senate Committee at Washington, could be easily disproved. He said that every time a mileage ticket was sold by a broker for use, it required the telling of one falsehood and the forgery of one name; that every time the return part of an iron-clad excursion ticket was sold by a broker, it required the telling of one falsehood, the forgery of one name and the bribery of the ticket agent to stamp the ticket. He says that brokers claim to only handle business where there is competition, and only in large cities; but he says that in 110 towns, where brokers are doing business, there are less than ten thousand people, according to the United States census, and in 31 of these towns there is only one railroad. He states that three members of the Guarantee Ticket Brokers' Association are now in the penitentiary for forgery. He says that in the States of New Jersey, Pennsylvania, Indiana, Illinois, Montana and Texas, there are laws similar to House Bill 10,090, which passed the House of Representatives at Washington by a two-thirds majority; and that the Supreme Courts of Pennsylvania, Illinois, Indiana and Minnesota have passed on these laws, declaring them constitutional. He says that the railroad companies have been obliged on account of the ticket scalpers to put all manner of restrictions on their tickets in order to prevent their being manipulated, and he says that the public, as a rule, does not patronize ticket brokers, and that the brokers have no money invested in the business, outside of their office fixtures, and the tickets that they may have on hand.

The passenger fares of the railroads of the State of New York are fixed by law, and are lower than those of the railroads in any other State of the Union; they are lower than those on the railroads of any country on the globe, and the service furnished by our railroads is superior to that of any other country in the world.

Just here, if you will permit me, I will quote from several

of the highest foreign authorities on this subject, and I am sure that the representatives of other railroads here present will pardon me for referring to it in a manner somewhat personal to the New York Central. The Imperial Government of Germany recently sent a commission to the United States to study our railroads, and in their report, which has just been received by the State Department at Washington, this language occurs: "Lack of speed, lack of comforts, lack of cheap rates, are the charges brought against the German Empire's railways, as compared with those of the United States." Of the report, Consul Monaghan, at Chemnitz, Germany, writes to the State Department that the commissioners went over a large portion of the Union, covering more than 8,000 miles, and that they classed the New York Central & Hudson River Railroad as one of the world's best railways. They compared the New York Central's "Exposition Flyer," covering 980 miles between New York and Chicago, in twenty hours, with the fast train from Leipsic to Rome, 945 miles, in thirty-five hours. Other comparisons that may be made are the New York Central's "Empire State Express," from New York to Buffalo, 440 miles, in eight and one-quarter hours; Berlin to Vienna, 438 miles, in fifteen hours; from New York to Chicago by the New York Central's "Limited Train," 980 miles, in twenty-five hours; from Paris to Rome, 905 miles, in thirty-four hours.

The German Commissioners' report goes on to say: "Lack of comfort on German railroads is due to the fact that Germany, like all continental countries, built its cars on England's model of the antediluvian stage coach. These swinging boxes, rattling from side to side, are the horror of English and continental travel. Of these, the United States railroad system knows nothing at all. The cars in the United States are models of comfort, easy riding and convenience." Our sleeping-car system is put down as vastly superior to the European. Our baggage system, they say, is infinitely better than theirs; and they make a point that we carry one hundred and fifty pounds of baggage free, while they carry only

fifty-five pounds free and then only on certain classes of tickets. They also commend our free time-table system and our bureaus of information. They state that the lighting of our trains is superb, while the lighting of the German trains is wretched. The German Empire is urged by this commission to copy many of our methods.

During the summer of 1896 the New York Central & Hudson River Railroad had the honor of entertaining and carrying across your State the ambassadors of Japan and China, who were sent to represent those countries at the coronation of the Czar of Russia at Moscow; and later carried Prince Michel Hilkoﬀ, Imperial Minister of Railways of Russia—the greatest foreign railway man who ever visited this country—over its line from New York to Buffalo and Niagara Falls, in daylight, and exhibited to him many of the marvelous manufacturing facilities and commercial advantages afforded by your great State.

Li Hung Chang, the great Viceroy of China, said: "Nowhere else in the world are there such fast and luxurious trains as in the State of New York."

"The speed, the comfort, the luxury of your railroads is a marvel to me," said Marquis Yamagata, Field Marshal of Japan.

"There is nothing in Europe to compare with your railroads," said Prince Hilkoﬀ, Imperial Minister of Railroads of Russia.

During the World's Fair, Sir Henry Truman Wood, secretary of the Royal Society of Arts, and a special representative of the English Government at the World's Fair, stated repeatedly that nowhere in Europe could there be found such luxury in travel as on the New York Central's limited trains.

The expression of these opinions should be a matter of just pride to every member of the Legislature of the State of New York—yes, to every citizen of the Empire State.

Mr. Chairman: Inasmuch as the passenger fares in this State are fixed by law, it would seem to be only right and proper that these fares and the traffic conducted under them

should not be interfered with by unauthorized and irresponsible persons, to the detriment alike of the traveling public and the transportation companies.

Passengers fares of New York railroads, being fixed by law, if found to be too high, should be reduced by act of the Legislature—the lawmaking power of this State—and if they are to be reduced it should be done in such a manner as to make the reduction available to every citizen of the State, the weakest as well as the strongest, the poorest as well as the richest; the infrequent traveler, who, seldom leaving home, does not understand the tricks of the ticket scalper, as well as the up-to-date business man, who needs no such protection; but it is not within the province of irresponsible and unauthorized ticket scalpers, who are neither officers of the State, nor employes of railroad companies, to arrogate to themselves the duties and powers of the Legislature in fixing rates of transportation. Wherever such irresponsible persons have been allowed, through the absence of laws on the subject, to interfere in these matters, it has invariably resulted in unjust discriminations against that portion of the public who need more than any other the protection of the law.

For the reasons herein set forth, and amplified in the documents which have been filed with your honorable body, we ask at your hands the passage of the bills now before you relating to this matter.

We ask this legislation, not in the name of the transportation companies alone, but in the name of that portion of the traveling public who are infrequent travelers, and from the very nature of their traveling are easily deceived by these irresponsible and unauthorized handlers of railroad tickets. It is that portion of the public who seldom leave their homes, and are the easy dupes of the green-goods man, the bunco-steerer, the confidence man and the ticket scalper; and this portion of the public—possibly more than any other—should receive the protection of the strong arm of the State. The sharp, up-to-date, thoroughly informed business or professional man needs no such protection; he knows where he wants to go, and what the cost

of his transportation should be, but the poor man, who receives small pay, needs every cent he gets, and who does not know about the fraud perpetrated in the dishonest handling of railroad transportation, loses by this illegitimate business.

We ask this legislation in the name of more than 500 bankers of the State of New York, who have petitioned your honorable body in favor of this bill.

We ask it in the name of all the teachers and public educators of the State of New York, for whose meetings we should be glad to give reduced rates, but for the presence of the ticket scalper, who changes and manipulates the return tickets to the mutual disadvantage of the conventions and the railroads.

We ask it in the name of all great religious bodies of the Empire State, who are hampered in their efforts to secure reduced rates for their conventions by the presence of the ticket scalper.

We ask this legislation in the name of more than 700 New York State hotel-keepers, whose business is interfered with by the ticket scalper, in preventing the holding of conventions which otherwise would be held in our cities.

We ask this legislation in the name of hundreds of representatives of the press in this State, who, appreciating the disreputable character of the business, have spoken and written in favor of legislation which would prevent dishonest handling of railroad transportation.

We ask this legislation in the name of the 140,000 employes of the transportation companies in the State of New York, who are loyal citizens of the State, and amenable to your laws.

We ask it in the name of every man who believes in fair dealing, and that all classes of the public—the poorest as well as the richest—should receive from the transportation companies every cent of reduction which may be legally made in the rates of fare, without paying tribute to any middleman to come between the transportation companies and the public whom they serve.

The Limitations of Governmental Regulations of the Railroads.

BY JOSEPH NIMMO, JR.

The progress of the world toward commercial and industrial liberty has come through the observance of beneficent restraints imposed by physical and economic conditions. The evolution of the American Railroad System furnishes a splendid illustration of the tendency of such wholesome restraints toward securing the best fruits of liberty in commercial and industrial affairs, and the largest possible advancement of the material interests of mankind.

The fact that the railroad is an avenue of commerce, the pathway of which is no wider than the wheel of the vehicle which moves upon it, differentiates it sharply from every other kind of commercial highway of which the world has had knowledge, and constitutes the fundamental organic restraint under which railroad transportation exists. This physical characteristic prevents the railroad from becoming, in the ordinary sense, a free highway of commerce and has dictated and absolutely compelled the adoption of the following economic and commercial restraints upon railway transportation, which do not apply on free highways of commerce:

1. *The framing of freight tariffs and the publication thereof.* The necessity for this particular restraint upon the freedom of railroad transportation manifested itself at an early date, and became an established custom among railroads without any compulsion of legal enactment. This constitutes a clean-cut departure from the practice which had prevailed and which still prevails on free highways of commerce. Time, however, has proved it to be a wholesome restraint upon railroad

transportation, and throughout the country it now has the sanction of law.

2. *Agreements as to competitive rates.* As competing lines were constructed, the necessity for agreements as to competing rates to and from rival trade centers became apparent. The laws of the country now recognize the necessity for such wholesome restraints upon the freedom of competition, and enforce them as a matter of common or experiential law.

3. *The uniform classification of merchandise as freight on different railroads.* This restraint upon the freedom of railroad transportation is somewhat in the nature of a corollary upon the publication of rates and agreements as to competitive rates. It had its origin solely in the lessons of experience. No legislator or railroad commissioner ever conceived of the necessity of such restraint upon railroad traffic in advance of its proven beneficence, but the laws of the land have for years recognized the importance of it and aid in its enforcement.

4. *Ample public notice of intended changes in rates.* This also is a restraint upon the freedom of competition not practiced on free highways of commerce, but found by the teachings of experience to be necessary for the maintenance of commercial order. The adoption of this restraint upon railroad transportation was in no instance the subject of legislative prescience or devisement, nor the outcome of any governmental regulation. The lawmaker has simply given it statutory sanction for the reason that it is dictated by what Lord Bacon styled the *lex legis*, or law of experience.

5. *Agreements as to the apportionment of competitive traffic.* Experience has proved this restraint upon the freedom of competition to be necessary in order to maintain agreed rates, and to prevent unjust discriminations, and commercial disorder. The commercial bodies of the country, quite generally, have been brought to see the soundness of this expedient. A strange prejudice founded upon mistaken ideas as to the intent and operations of this form of restraint upon railroad transportation has, however, to some extent, deterred legislators from giving it the sanction of law.

The several restraints upon the freedom of competition thus mentioned constitute the substantial basis of all beneficent railroad administration in this country; and, as before observed, the progress of commercial and industrial liberty has come through the observance of restraints. During the last thirty years the American Railroad System has become the instrument of a larger commercial development than previously existed on this continent, and it now constitutes the most extensive, the cheapest and the most efficient system of transportation that the world ever saw.

Gradually the railroad companies of the country established a common track gauge, and entered into agreements for the interchange of traffic and the joint use of freight cars, until at length the various lines became unto the shipper and traveler as one great American Railroad System. This brought ten thousand trade centers, as well as the agricultural, manufacturing and mining industries of the whole country, into active competition. So above and aside from all those particular restraints upon the freedom of railroad transportation, enforced by the lessons of experience, the competition of commercial and industrial forces now exerts an overpowering influence in determining the value of transportation services. The tendency of this is constantly toward a parity of prices and of freight charges. Thus the competition of commercial and industrial forces exerts a much stronger influence in the determination of freight charges than any power which the railroad companies can exert, either singly or through any possible form of combination. This is not theory, but the verdict of actual experience. The average rate of transportation on railroads has been reduced to less than half the average rate only twenty years ago, viz.: for 2 cents a ton a mile in 1873, to 0.8 of one cent a ton a mile in 1893—the latter being only 40 per cent. of the former rate. This reduction of rates, upon the basis of the tonnage of 1893, amounted, for the whole country, to over one thousand million dollars. It has been of enormous advantage to the country, but severe on railroad corporate interests. Besides during the last nineteen years about 31 per cent. of the railroad

property of this country has gone into bankruptcy. All this has been directly or indirectly the result of the interaction of commercial and industrial forces. The railroad companies have strenuously, but in vain, opposed this downward tendency of rates and of railroad properties.

President Roberts of the Pennsylvania Railroad Company said in his last annual report:

"The return that your property makes to its shareholders is infinitesimal as compared with the return it makes to the great country which it traverses."

That is beyond all question, and it proclaims the most important fact in the history of railroad transportation in this country.

But in addition to the enormous advantages which the country at large has realized from the reduced cost of railroad transportation, another vitally important public advantage has been secured. Out of the interaction of competing forces already described the transportation of merchandise in the United States has acquired a clearly defined commercial value, which has become the substantial basis of beneficent governmental regulation. Thus a great commercial principle regarding railroad transportation has been evolved.

It appears evident from the foregoing that the business of railroad transportation in this country is not, as some would suppose, a thing at haphazard, which must be cared for and coddled and controlled by governmental authority. On the other hand, the function of governmental regulation of the railroads is limited, first, to the enforcement of those wholesome economic and commercial restraints which experience has dictated and custom established; and second, to the determination of just and reasonable rates along continuous lines, upon the basis of the commercial values of transportation services. This is the *regulation* in contradistinction to the administration of the railroads.

This delimitation of responsibility and authority, however, involves nothing new in principle. Those wholesome rules of public policy upon which our form of government securely

rests were begotten of faith in the beneficent results of the interaction of untrammelled commercial and industrial forces. Said President Jefferson, in his first annual message to Congress: "Agriculture, manufactures, commerce and navigation, the four pillars of our prosperity, are the most thriving when left most free to individual enterprise." This expresses that particular feature of Americanism which we delight to call Jeffersonianism. It is liberty born of wholesome and necessary restraint and regulated by the highest form of law—the law of human experience. This is strikingly exemplified in the evolution of the American Railroad System, which has attained unto its present beneficent condition through the outworking of the natural or economic law of its being, a law which has its expression in clearly defined restraints, dictated by the interaction of commercial and industrial forces.

Refusal to distinguish between the administration and the governmental regulation of railroad transportation is, however, a prevailing fault of the present time. Conformity to the restraints and governing conditions already described is an administrative function which devolves upon railroad managers. Governmental regulation, on the other hand, implies merely the duty of seeing to it that the correct relative commercial value is given to different rates along continuous lines, and that other practices proved by the lessons of experience to be just and beneficent are observed. This conforms to Jefferson's rule of leaving commerce "free to individual enterprise." The faithful observance of this rule of public policy will keep our national government out of any mischievous and un-American paternalism.

In conformity with this idea the Interstate Commerce Act relates mainly to the prevention of unjust discriminations and exorbitant rates. All decisions of the Interstate Commerce Commission in regard to rates also rest upon the commercial value of transportation services as determined by that interaction of commercial and industrial forces already described. The decisions of the commission in regard to discriminations and to remissions of the long and short haul rule of the fourth

section gain approbation and appeal to the public sense of justice only as they are based upon the commercial value of transportation services, determined in the manner already described. The result of such administration of the Interstate Commerce Act has been most gratifying. Of all the complaints which reached the commission during the year 1893, only sixteen cases came to a hearing and determination, and not a single case of exorbitant charges was proved. Only about two-thirds of the sixteen cases heard involving unjust discriminations, or about eleven, were decided against railroad companies.

But in the face of the foregoing facts proving the necessary and proper limitations upon governmental regulation, the Interstate Commerce Commission has for several years been uttering the appeal to Congress, "Strengthen the Commission! Strengthen the Commission!" As opportunity has afforded I have earnestly opposed such appeals for additional power. In their third annual report, submitted to Congress November 30, 1889, the commission, on page 106, commented upon the "incongruity" of adding the "judicial function" to their prosecuting function. But within fourteen months thereafter they came before Congress with a strenuous appeal for judicial powers in order to "strengthen the commission." Several able lawyers, among them the Honorable Richard Olney, now Attorney-General of the United States,* appeared before a committee of the Senate and protested against such a mischievous perversion of our governmental polity. By the courtesy of the committee I took part in that discussion, confining my attention to the commercial and economic aspects of the case. I am inclined to believe that the contention of the Interstate Commerce Commission was regarded as being rather absurd. At any rate, Congress took no action whatever in regard to it.

But the appeal, "Strengthen the Commission," in one form and another has been reiterated by that body ever since. A member of the commission contended before the World's Railway Congress at Chicago, in 1893, for a certain form of rate-

* Since this was sent to the printer, Mr. Olney has become Secretary of State.

making. About a year ago one of the commissioners appeared before the Senate Committee on Interstate Commerce with a clean-cut request that Congress would grant to the commission a somewhat general power of rate-making, alleging that it was necessary in order to "strengthen the commission." This was an astounding proposition. It involved nothing less than a recommendation in favor of imposing upon the executive branch of the Government of the United States full and complete responsibility for the prosperity of the commercial and industrial interests of the United States, and for the course of its development. That constituted an open repudiation of the doctrine of Thomas Jefferson, that the commerce of the country should be "left free to individual enterprise"—by which Mr. Jefferson meant, of course, free to *American individual enterprise*. Happily this rate-making proposition as signally failed to command the serious attention of Congress as did the proposition made two years before to confer upon the commission judicial powers.

During the last session of Congress, Mr. Morrison, chairman of the Interstate Commerce Commission, a professed follower of Thomas Jefferson, appeared before the Senate Committee on Interstate Commerce and pleaded in favor of refusing to allow railroad companies to enter into agreements as to the apportionment of competitive traffic, unless such agreements are first submitted to the commission for its approval or disapproval. But as already explained, such agreements constitute a mode of self-restraint dictated by economic conditions for the prevention of a destructive and demoralizing competition, for the maintenance of agreed rates, and for the prevention of unjust discriminations—fundamental objects for which the Interstate Commerce Commission was instituted. Mr. Morrison's appeal constitutes an unmistakable expression of that form of paternalism here and there advocated throughout the country, but which goes in the face of that expression of Jeffersonianism which I have already quoted. As well subject any other wholesome commercial or economic restraint to the discretion of the commission, and thus make its will a law of laws.

Evidently the proposition advanced by Mr. Morrison, if adopted, would "strengthen the commission," and promote its glory through an addendum in the nature of an *index expurgatorius*, both of which objects are distinctly un-Jeffersonian and paternalistic. The adoption of such an expedient as that proposed by Mr. Morrison would also introduce in this country the bad precedent of subjecting purely commercial contracts to governmental supervision; and, as I before remarked, it would impose upon our National Government responsibility for the prosperity and for the course of the development of this great country with its almost infinite variety of commercial and economic conditions. This would be an error of the most serious character.

The prevailing political fault of the times is the propensity to ignore the fact that all sound commercial law must be based upon the lessons of experience, and that all wholesome governmental regulations must be subordinated to governing economic and commercial conditions.

In a word, the work of the Interstate Commerce Commission relates solely to the frictional resistances and the incidental evils of the grandest system of transportation which the world ever saw. It is therefore the height of folly and the baldest violation of our cherished principles of Americanism to assume that the Interstate Commerce Commission should have the right to administer, or that it has the ability to administer, the transportation interests of this vast country. Better a thousand times wipe the Interstate Commerce Commission out of existence than commit our Government to any such paternalistic and un-American line of policy. The very attempt to make such a departure from settled rules of public policy would plunge our Government into the most embarrassing complications.

If populism shall force its tenets to the decision of the American people, I know of no issue upon which the absurdity of its principles can be so easily illustrated as upon that of attempting to place the transportation interests of this country under governmental ownership or control. The adoption of

such a policy would be a crime against the basic principles upon which our Government rests.

For the ability and sincerity of purpose of the gentlemen who, from the beginning, have composed the Interstate Commerce Commission, I entertain no other feelings than of respect. I have also regarded, with profound admiration, their work within the limitations of preventing unjust discriminations and exorbitant rates, the gratifying results of which work have already been mentioned. I differ with those gentlemen only in regard to questions of public policy which it has been my object here briefly to discuss.

The study of this great subject, as private citizen and as Government officer for thirty years, inspires me with an enthusiastic purpose to advocate what I regard as fundamental principle, the maintenance of which is essential to the peace and prosperity of our country. I cannot for a moment entertain the thought that the Congress of the United States can be deluded into the folly of granting to the Interstate Commerce Commission the power, in any manner or degree, to administer the commercial and industrial affairs of this great country, and thus to compromise its political character. The effect of such action would be calamitous. Our government was built upright. It has stood for more than a century, "four square to all the winds that blow," and so let it stand forever.

The Trans-Missouri Case.

I.

SUPREME COURT OF UNITED STATES.

No. 67.—OCTOBER TERM, 1896.

The United States Appellant,	} Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.
<i>vs.</i> The Trans-Missouri Freight Association.	

[March 22, 1897.]

On the 2d day of July, 1890, an act was passed by the Congress of the United States, entitled, "An act to protect trade and commerce against unlawful restraints and monopolies." (26 Statutes at Large, 209, chap. 647; Supplement to Revised Statutes, p. 762.)

The act is given in full on the margin.*

On the 15th day of March, 1889, all but three of the defendants, the railway companies named in the bill, made and entered into an agreement by which they formed them-

* An act to protect trade and commerce against unlawful restraints and monopolies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

Section 1. Every contract combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 3. Every contract, combination in form of trust or otherwise, or conspiracy in restraint of trade or commerce in any Territory

selves into an association to be known as the "Trans-Missouri Freight Association," and they agreed to be governed by the provisions contained in the articles of agreement.

of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 4. The several Circuit Courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States in their respective districts, under the direction of the attorney-general, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Sec. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

Sec. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure and condemnation of property imported into the United States contrary to law.

Sec. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any Circuit Court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three-fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

Sec. 8. That the word "person," or "persons," wherever used in this act, shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Approved, July 2, 1890.

The memorandum of agreement entered into between the railway companies named therein, stated, among other things, as follows: "For the purpose of mutual protection by establishing and maintaining reasonable rates, rules and regulations on all freight traffic, both through and local, the subscribers do hereby form an association to be known as the Trans-Missouri Freight Association, and agree to be governed by the following provisions."

"ARTICLE I.

"The traffic to be included in the Trans-Missouri Freight Association shall be as follows:

"1. All traffic competitive between any two or more members hereof, passing between points in the following described territory: Commencing at the Gulf of Mexico, on the 95th meridian, thence north to the Red River; thence via that river to the eastern boundary line of the Indian Territory; thence north by said boundary line and the eastern line of the State of Kansas to the Missouri River at Kansas City; thence via said Missouri River to the point of intersection of that river with the eastern boundary of Montana; thence via the said eastern boundary line to the international line—the foregoing to be known as the 'Missouri River line'—thence via said international line to the Pacific coast; thence via the Pacific coast to the international line between the United States and Mexico; thence via said international line to the Gulf of Mexico, and thence via said gulf to the point of beginning, including business between points on the boundary line as described.

"2. All freight traffic originating within the territory as defined in the first section when destined to points east of the aforesaid Missouri River line."

Certain exceptions to the above article are then stated as to the particular business of several railway companies, which was to be regarded as outside and beyond the provisions of the agreement.

Article II provided for the election of a chairman of the

organization and for meetings at Kansas City, or otherwise, as might be provided for. By section 2 of that article each road was to "designate to the chairman one person who shall be held personally responsible for rates on that road. Such person shall be present at all regular meetings, when possible, and shall represent his road, unless a superior officer is present. If unable to attend he shall send a substitute with written authority to act upon all questions which may arise, and the vote of such substitute shall be binding upon the company he represents."

Section 3 provides that: "A committee shall be appointed to establish rates, rules and regulations on the traffic subject to this association, and to consider changes therein, and makes rules for meeting the competition of outside lines. Their conclusions, when unanimous, shall be made effective when they so order, but if they differ the question at issue shall be referred to the managers of the lines parties hereto; and if they disagree it shall be arbitrated in the manner provided in article VII."

By section 4 it was provided that: "At least five days' written notice prior to each monthly meeting shall be given the chairman of any proposed reduction in rates or change in any rule or regulation governing freight traffic; eight days in so far as applicable to the traffic of Colorado or Utah."

Sections 5, 6, 7, 8, 9, 10 and 11 of article II read as follows:

"Sec. 5. At each monthly meeting the association shall consider and vote upon all changes proposed, of which due notice has been given, and all parties shall be bound by the decision of the association, as expressed, unless then and there the parties shall give the association definite written notice that, in ten days thereafter, they shall make such modification notwithstanding the voice of the association: Provided, that if the member giving notice of change shall fail to be represented at the meeting, no action shall be taken on its notice, and the same shall be considered withdrawn. Should any member insist upon a reduction of rate against the views of

the majority, or if the majority favor the same, and if, in the judgment of such majority, the rate so made affects seriously the rates upon other traffic, then the association may, by a majority vote, upon such other traffic, put into effect corresponding rates to take effect on the same day. By unanimous consent, any rate, rule or regulation relating to freight traffic may be modified at any meeting of the association without previous notice.

"Sec. 6. Notwithstanding anything in this article contained, each member may, at its peril, make at any time, without previous notice, such rate, rule or regulations as may be necessary to meet the competition of lines not members of the association, giving at the same time notice to the chairman of its action in the premises. If the chairman, upon investigation, shall decide that such rate is not necessary to meet the direct competition of lines not members of the association, and shall so notify the road making the rate, it shall immediately withdraw such rate. At the next meeting of the association held after the making of such rate, it shall be reported to the association, and if the association shall decide by a two-thirds vote that such rate was not made in good faith to meet such competition, the member offending shall be subject to the penalty provided in section 8 of this article. If the association shall decide by a two-thirds vote that such rate was made in good faith to meet such competition, it shall be considered as authority for the rate so made.

"Sec. 7. All arrangements with connecting lines for the division of through rates relating to traffic covered by this agreement shall be made by authority of the association: Provided, however, that when one road has a proprietary interest in another, the divisions between such roads shall be what they may elect, and shall not be the property of the association: Provided, further, that, as regards traffic contracts at this date actually existing between lines not having common proprietary interests, the same shall be reported, so far as divisions are concerned, to the association, to the end that divisions with competing lines may, if thought advisable by them, be made on equally favorable terms.

"Sec. 8. It shall be the duty of the chairman to investigate all apparent violations of the agreement, and to report his findings to the managers, who shall determine, by a majority vote (the member against whom complaint is made to have no vote), what, if any, penalty shall be assessed, the amount of each fine not to exceed one hundred dollars, to be paid to the association. If any line party hereto agrees with the shipper, or anyone else, to secure a reduction or change in rates, or change in the rules and regulations, and it is shown upon investigation by the chairman that such an arrangement was effected, and traffic thereby secured, such action shall be reported to the managers, who shall determine, as above provided, what, if any, penalty shall be assessed.

"Sec. 9. When a penalty shall have been declared against any member of this association, the chairman shall notify the managing officer of said company that such fine has been assessed, and that within ten days thereafter he will draw for the amount of the fine; and the draft, when presented, shall be honored by the company thus assessed.

"Sec. 10. All fines collected to be used to defray the expenses of the association, the offending party not to be benefited by the amounts it may pay as fines.

"Sec. 11. Any member not present or fully represented at roll call of general or special meetings of the freight association, of which due and proper notice has been given, shall be fined one dollar, to be assessed against his company, unless he shall have previously filed with the chairman notice of inability to be present or represented."

Articles 3, 5, 6 and 7 contain appropriate provisions for the carrying out of the purposes of the agreement, but it is not necessary to here set them forth in detail.

Article IV reads as follows:

"ARTICLE IV.

"Any willful underbilling in weights, or billing of freight at wrong classification, shall be considered a violation of this agreement; and the rules and regulations of any weighing

association or inspection bureau, as established by it or as enforced by its officers and agents, shall be considered binding under the provisions of this agreement, and any willful violation of them shall be subject to the penalties provided herein."

Article VIII provides that the agreement shall take effect April 1, 1889, subject thereafter to 30 days' notice of a desire on the part of any line to withdraw from the same.

On the 6th of January, 1892, the United States, as complainant, filed in the Circuit Court of the United States for the District of Kansas, through its United States attorney for that district, and under the direction of the attorney-general of the United States, its bill of complaint against the Trans-Missouri Freight Association, named in the agreement above mentioned, the Atchison Topeka & Santa Fe Railroad Company, and some seventeen other railroad companies, the officers of which had, it was alleged, signed the agreement above mentioned in behalf of and for their respective companies. The bill was filed by the Government for the purpose of having the agreement between the defendant railroad companies set aside and declared illegal and void, and to have the association dissolved.

It alleged that the defendant railroad corporations, signing the agreement were at that time and ever since have been common carriers of all classes and kinds of freight and commodities which were commonly moved, carried and transported by railroad companies in their freight traffic and at all such times have been, and then were, continuously engaged in transporting freight and commodities in the commerce, trade and traffic which is continuously carried on among and between the several States of the United States, and among and between the several States and Territories of the United States, and between the people residing in, and all persons engaged in trade and commerce within and among and between, the States, Territories and countries aforesaid; that each of the defendants was, prior to the 15th day of March, 1889, the owner and in the control of, and that they were respectively operating and using, distinct and separate lines of railroad, fitted up for car-

rying on business as such carriers in the freight traffic above mentioned independently and disconnectedly with each other, and that said lines of railroad have been and then were the only lines of transportation and communication engaged in the freight traffic between and among the States and Territories of the United States having through lines for said freight traffic in all that region of country lying to the westward of the Mississippi and Missouri rivers and east of the Pacific ocean; that these lines of railroad furnish to the public and to persons engaged in trade and traffic and commerce between the several States and Territories and countries above mentioned separate, distinct and competitive lines of transportation and communication, extending along and between the States and Territories of the United States lying westward of the Mississippi and Missouri rivers to the Pacific Ocean, and that the construction and maintenance of said several separate, distinct and competitive lines of railroad aforesaid had been encouraged and assisted by the United States and by the States and Territories in the region of country aforesaid, and by the people of the said several States and Territories, by franchises and by grants and donations of large amounts of land of great value and of money and securities, for the purpose of securing to the public and to the people engaged in trade and commerce throughout the region of country aforesaid competitive lines of transportation and communication, and that prior to the 15th day of March, 1889, and subsequently and up to the present time, each and all of said defendants have been and are engaged as common carriers in the railway freight traffic connected with the interstate commerce of the United States.

It is then alleged in the bill as follows:

"And your orator further avers that on or about the fifteenth day of March, 1889, the defendants not being content with the usual rates and prices for which they and others were accustomed to move, carry and transport property, freight and commodities in the trade and commerce aforesaid and in their said business and occupation, but contriving and

intending unjustly and oppressively to increase and augment the said rates and prices, and to counteract the effect of free competition on the facilities and prices of transportation, and to establish and maintain arbitrary rates, and to prevent any one of said defendants from reducing such arbitrary rates, and thereby exact and procure great sums of money from the people of the said States and Territories aforesaid, and from the people engaged in the interstate commerce, trade and traffic within the region of country aforesaid, and from all persons having goods, wares and merchandise to be transported by said railroads, and intending to monopolize the trade, traffic and commerce among and between the States and Territories aforesaid, did combine, conspire, confederate and unlawfully agree together, and did then and there enter into a written contract, combination, agreement and compact, known as a memorandum of agreement of the Trans-Missouri Freight Association, which was signed by each of the said above-named defendants."

The bill then sets forth the agreement signed by the various corporations defendant.

It is further alleged that the agreement went into effect on the 1st day of April, 1880, and that since that time each and all of the defendants, by reason of the agreement, have put into effect and kept in force upon the several lines of railroads the rules and regulations and rates and prices for moving, carrying and transporting freight fixed and established by the association, and have declined and refused to fix or establish and maintain or give on their railroads rates and prices for the carrying of freight based upon the cost of constructing and maintaining their several lines of railroad and the cost of carrying freights over the same, and such other elements as should be considered in establishing tariff rates upon each particular road, and the people of the States and Territories subject to said association, and all persons engaged in trade and commerce within, among and between the different States and Territories have been compelled to and are still compelled to pay the arbitrary rates of freight and submit

to the arbitrary rules and regulations established and maintained by the association, and ever since that date have been and still are deprived of the benefits that might be expected to flow from free competition between said several lines of transportation and communication, and are deprived of the better facilities and cheaper rates of freight that might reasonably be expected to flow from free competition between the lines above mentioned, and that the trade, traffic and commerce in such region of country, and the freight traffic in connection therewith, have been and are monopolized and restrained, hindered, injured and retarded by the defendants by means and through the instrumentality of such association.

The bill further averred that notwithstanding the passage of the act of Congress above mentioned on the 2d day of July, 1890, the "defendants still continue in and still engage in said unlawful combination and conspiracy, and still maintain said Trans-Missouri Freight Association, with all the powers specified in the memorandum of agreement and articles of association hereinbefore set forth, which said agreement, combination and conspiracy so as aforesaid entered into and maintained by said defendants is of great injury and grievous prejudice to the common and public good and to the welfare of the people of the United States."

The prayer of the bill is as follows:

"In consideration whereof, and inasmuch as your orator can only have adequate relief in the premises in this honorable court where matters of this nature are properly cognizable and relievable, your orator prays that this honorable court may order, adjudge and decree that said Trans-Missouri Freight Association be dissolved, and that said defendants, and all and each of them, be enjoined and prohibited from further agreeing, combining and conspiring and acting together to maintain rules and regulations and rates for carrying freight upon their several lines of railroad to hinder trade and commerce between the States and Territories of the United States, and that all and each of them be enjoined and prohibited from entering or continuing in a combination, association

or conspiracy to deprive the people engaged in trade and commerce between and among the States and Territories of the United States of such facilities and rates and charges of freight transportation as will be afforded by free and unrestrained competition between the said several lines of railroad, and that all and each of said defendants be enjoined and prohibited from agreeing, combining and conspiring and acting together to monopolize or attempt to monopolize the freight traffic in the trade and commerce between the States and Territories of the United States, and that all and each of said defendants be enjoined and prohibited from agreeing, combining and conspiring and acting together to prevent each and any of their associates from carrying freight and commodities in the trade and commerce between the States and Territories of the United States at such rates as shall be voluntarily fixed by the officers and agents of each of said roads acting independently and separately in its own behalf."

The defendants were required to answer fully, etc., each and all of the matters charged in the bill, but such answer was not required to be under oath, an answer under oath being specially waived.

The Chicago Kansas & Nebraska Railway Company, the Missouri Kansas & Texas Railway Company, and the Denver Texas & Fort Worth Railroad Company denied being parties to the association. The other fifteen companies filed separate answers, each setting up substantially the same defense.

They admit they are common carriers engaged in the transportation of persons and property in the States and Territories mentioned in the agreement, and they allege that as such common carriers they are subject to the provisions of the act of Congress, approved February 4, 1887, entitled "An act to regulate commerce," with the various amendments thereof and additions thereto, and they allege that that act and the amendments constitute a system of regulations established by Congress for common carriers subject to the act, and they deny that they are subject to the provisions of the act of Congress passed July 2, 1890, and above set forth.

They admit that they severally own, control and operate separate and distinct lines of railroad constructed and fitted for carrying on business as common carriers of freight, independently and disconnectedly with each other; except that a common interest exists between certain companies, named in the answer. They admit that the lines of railroad mentioned in the bill furnish lines of transportation and communication to persons engaged in the freight traffic between and among the States and Territories of the United States, having through lines for freight traffic in that region of country lying to the westward of the Mississippi and Missouri rivers and east of the Pacific ocean, but deny that they are the only such lines, and allege that there are several others, naming them.

They further admit that prior to the organization of the freight association the defendants furnished to the public and to persons engaged in trade, traffic and commerce between the several States and Territories named in the agreement, separate, distinct and competitive lines of transportation and communication and they allege that they still continue to do so.

They admit that some of the roads mentioned in the bill received aid by land grants from the United States, and others received aid from States and Territories by loans of credits, donations or depot sites and rights of way, and in a few cases by investments of money, and that the people of the States and Territories to a limited extent made investments in the stocks and bonds of some of the roads, while others, mentioned in the bill, were almost exclusively constructed by capital furnished by non-residents of that region.

It is also admitted that the purpose of the land grants, loans, donations and investments was to obtain the construction of competitive lines of transportation and communication to the end that the public and the people engaged in trade and commerce throughout that region of country might have facilities afforded by railways in communicating with each other and with other portions of the United States and the world, and denies that they were granted for any other purpose.

The defendants admit the formation on or about March 15, 1889, of the voluntary association described in the bill as the "Trans-Missouri Freight Association."

They deny the allegation that they were not content with the rates and prices prevailing at the date of the agreement; they deny any intent to unjustly increase rates, and deny that the agreement destroyed, prevented or illegally limited or influenced competition; they deny that arbitrary rates were fixed or charged, or that rates have been increased, or that the effect of free competition has been counteracted; they deny any purpose in the formation of the association to monopolize trade, traffic and commerce between the States and Territories within the region mentioned in the bill; and they deny that the agreement is in any respect the illegal result of any unlawful confederation or conspiracy. The defendants allege that the proper object of the association is to establish reasonable rates, rules and regulations on all freight traffic, and the maintenance of such rates until changed in the manner provided by law; that the agreement was filed with the Interstate Commerce Commission as required by section 6 of the act of February 4, 1887. They also allege that it was not the purpose of the association to prevent the members from reducing rates or changing the rules and regulations fixed by the association; that by the terms of the agreement each member may do so, the preliminary requirement being that the proposed change shall be voted upon at a meeting of the association, after which if the proposal is not agreed to the line making the proposal can make such reduced rate notwithstanding the objection of the other lines; that the purpose of this provision was to afford opportunity for the consideration of the reasonableness of any proposed rate, rule or regulation by all lines interested and an interchange of views on the effect of such reduction, and that reductions of rates have been made in numerous instances through said process by the association. They admit the agreement took effect April 1, 1889, and that it has remained in operation since, and that the rates, rules and regulations fixed and established from time to time under said agreement have

been put into effect and maintained in conformity to law, and it is denied that by reason of the agreement or under duress of fines and penalties or otherwise, the defendants have refused to establish and maintain just and reasonable rates; and it is alleged that the object of the association at all times has been and is to establish all rates, rules and regulations upon a just and reasonable basis, and to avoid unjust discrimination and undue preference. They deny that shippers or the public are in any way oppressed or injured by reason of the rates fixed by the association, but on the contrary they allege that the agreement and the association established under it have been beneficial to the patrons of the railway lines composing the association and the public at large. These in substance are the allegations in the various answers.

The cause came on for hearing on bill and answer before the Circuit Court of the United States for the district of Kansas, first division. That court dismissed the bill without costs against the complainant. (53 Fed. Rep. 440.) The Government duly appealed from the judgment to the United States Circuit Court of Appeals for the eighth circuit, and that court after argument affirmed, in October, 1893, the judgment of the Circuit Court, without costs, Shiras, district judge, dissenting. (19 U. S. App. 36.) From that judgment the Government has appealed to this court.

A motion is now made upon affidavits to dismiss the appeal. The affidavits show that on the 18th of November, 1892, a resolution was adopted by the Trans-Missouri Freight Association, one of the defendants, providing that the organization should be discontinued from and after the 19th of November, 1892, and the secretary was instructed to wind up its affairs at as early a date as possible. It further appeared by the affidavits that the Trans-Missouri Freight Association was actually dissolved, and its existence ended on the above date, November 19, 1892, and that it has not since that date been revived, nor has it since that date had any activity of any kind, "and that it has not conducted or been engaged in any operations or business whatever, but that it has been dead and out of existence."

It is also alleged as another ground for dismissing the appeal that the matter in controversy does not exceed \$1,000, and that the case does not come under any other provision of the act of 1891, allowing an appeal from the Circuit Courts of Appeals to this court. In opposition to the motion it appeared upon the part of the appellant that at the same meeting at which the resolution above referred to was adopted, the following resolution was also adopted: "Resolved, That a committee of seven be appointed by the chairman of this meeting to draw up a new agreement for the conduct of business now substantially covered by the Trans-Missouri agreement and to make a report to all lines in the Trans-Missouri Association at a meeting to be called in Chicago on December 6, 1892." A committee of seven was accordingly appointed, which adopted a resolution calling for a meeting for the 6th of December, 1892, of the lines formerly members of the Trans-Missouri Association and representatives of other interested lines for the purpose of considering any changes in the tariffs and of business which was under the jurisdiction of that association and which might be submitted to the parties at that time, and to further consider the organization of one or more rate committees to govern the manner of making rates on such traffic until some permanent organization could be effected. In the early days of December, 1892, the meeting so called was held and was participated in by most of the railroad companies which were parties to the Trans-Missouri agreement, and at that meeting an agreement was made upon the subject of rates of freight, and a West-Missouri freight rate committee was appointed, the duties of which committee were to establish and maintain reasonable rates in the territory described, and other lines not therein represented but interested in the freight traffic of such territory were to be invited to become members. A plan for the establishment of sub-rate committees for the purpose of agreeing upon rates was therein set forth and agreed to. The agreement was to become effective on the 1st of January, 1892, and to remain in force until the

following April, during which time it was supposed that a new and permanent association to provide for an agreement relating to rates of freight might be founded. It does not appear whether such permanent association has been formed or that the temporary agreement has been actually terminated.

In answer to the motion to dismiss on the ground that the matter in controversy did not amount to over one thousand dollars, the parties have stipulated as follows: "It is hereby stipulated for the purposes of this case and no other, and without waiving any right to question the legal effect of such fact, that the daily freight charges on interstate shipments collected by all the railway companies at points where they compete with each other were, at the time of the agreement mentioned in the pleadings herein, and have been since, more than one thousand dollars."

Mr. Justice Peckham after stating the facts, delivered the opinion of the court:

The defendants object to the hearing of this appeal, and ask that it be dismissed on the ground that the Trans-Missouri Freight Association has been dissolved by a vote of its members since the judgment entered in this suit in the court below. A further ground urged for the dismissal of the appeal is that the requisite amount (over one thousand dollars) is not in controversy in the suit, and that as an appeal would only lie to this court in this character of suit under the act of March 3, 1891 (Chap. 517, Supplement R. S. 901), where that amount is in controversy, the appeal should be dismissed.

As to the first ground, we think the fact of the dissolution of the association does not prevent this court from taking cognizance of the appeal and deciding the case upon its merits.

The prayer of the bill filed in this suit asks not only for the dissolution of the association, but, among other things, that defendants should be restrained from continuing in a like combination, and that they should be enjoined from

further conspiring, agreeing or combining and acting together to maintain rules and regulations and rates for carrying freight upon their several lines, etc. The mere dissolution of the association is not the most important object of this litigation. The judgment of the court is sought upon the question of the legality of the agreement itself for the carrying out of which the association was formed, and if such agreement be declared to be illegal, the court is asked not only to dissolve the association named in the bill, but that the defendants should be enjoined for the future.

The defendants, in bringing to the notice of the court the fact of the dissolution of the association, take pains to show that such dissolution had no connection or relation whatever with the pendency of this suit, and that the association was not terminated on that account. They do not admit the illegality of the agreement, nor do they admit their purpose not to enter into a similar one in the immediate future. On the contrary, by their answers the defendants claim that the agreement is a perfectly proper, legitimate and salutary one, and that it or one like it is necessary to the prosperity of the companies. If the injunction were limited to the prevention of any action by the defendants under the particular agreement set out, or if the judgment were to be limited to the dissolution of the association mentioned in the bill, the relief obtained would be totally inadequate to the necessities of the occasion, provided an agreement of that nature were determined to be illegal. The injunction should go further, and enjoin defendants from entering into or acting under any similar agreement in the future. In other words, the relief granted should be adequate to the occasion.

As an answer to the fact of the dissolution of the association, it is shown on the part of the Government that these very defendants, or most of them, immediately entered into a substantially similar agreement, which was to remain in force for a certain time, and under which the companies acted and in regard to which it does not appear that they

are not still acting. If the mere dissolution of the association worked an abatement of the suit as to all the defendants, as is the claim made on their part, it is plain that they have thus discovered an effectual means to prevent the judgment of this court being given upon the question really involved in the case. The defendants having succeeded in the court below, it would only be necessary thereafter to dissolve their association and instantly form another of a similar kind, and the fact of the dissolution would prevent an appeal to this court or procure its dismissal if taken. This result does not and ought not to follow. Although the general rule is that equity does not interfere simply to restrain a possible future violation of law, yet where parties have entered into an illegal agreement and are acting under it, and there is no adequate remedy at law and the jurisdiction of the court has attached by the filing of a bill to restrain such or any like action under a similar agreement, and a trial has been had, and judgment entered, the appellate jurisdiction of the court is not ousted by a simple dissolution of the association, affected subsequently to the entry of judgment in the suit.

Private parties may settle their controversies at any time, and rights which a plaintiff may have had at the time of the commencement of the action may terminate before judgment is obtained or while the case is on appeal, and in any such case the court, being informed of the facts, will proceed no further in the action. Here, however, there has been no extinguishment of the rights (whatever they are) of the public, the enforcement of which the Government has endeavored to procure by a judgment of a court under the provisions of the act of Congress above cited. The defendants cannot foreclose those rights nor prevent the assertion thereof by the Government as a substantial trustee for the public under the act of Congress, by any such action as has been taken in this case. By designating the agreement in question as illegal and the alleged combination as an unlawful one, we simply mean to say that such is the character of the agreement as

claimed by the Government. That question the Government has the right to bring before the court and obtain its judgment thereon. Whether the agreement is of that character is the question herein to be decided.

We think, therefore, the first ground urged by defendants for the dismissal of the appeal is untenable.

We have no difficulty either in sustaining the jurisdiction of this court, in regard to the second ground, that of the amount in controversy in the suit.

The bill need not state, in so many words, that a certain amount exceeding \$1,000 is in controversy in order that this court may have jurisdiction on appeal. The statutory amount must, as a matter of fact, be in controversy, yet that fact may appear by affidavit after the appeal is taken to this court (*Whiteside v. Haselton*, 110 U. S. 296; *Red River Cattle Company v. Needham*, 137 U. S. 632), or it may be made to appear in such other manner as shall establish it to the satisfaction of the court. A stipulation between the parties as to the amount is not controlling, but in the discretion of the court it may be regarded in a particular case, and with reference to the other facts appearing in the record as sufficient proof of the amount in controversy to sustain the jurisdiction of this court.

The bill shows here an agreement entered into (as stated in the agreement itself) for the purpose of maintaining reasonable rates to be received by each company executing the agreement, and the stipulation entered into between the parties hereto shows that the daily freight charges on interstate shipments collected by the railway companies at points where they compete with each other were, at the time of the making of the agreement mentioned in the pleadings herein and have been since, more than \$1,000. This agreement so made, the Government alleges, is illegal as being in restraint of trade, and was entered into between the companies for the purpose of enhancing the freight rates. The companies, while denying the illegality of the agreement or its purpose to be other than to maintain reasonable rates, yet allege that without some such agreement the competition between them for traffic would be

so severe as to cause great losses to each defendant and possibly ruin the companies represented in the agreement. Such a result, it is claimed, is avoided by reason of the agreement. Upon the existence, therefore, of this or some similar agreement directly depends (as is alleged) the prosperity, if not the life of each company. It must follow that an amount much more than a thousand dollars is involved in the maintenance of the agreement or in the right to maintain it or something like it. These facts, appearing in the record and the stipulation, show that the right involved is a right which is of the requisite pecuniary value. A reduction of the rates by only the fractional part of one per centum would, in the aggregate, amount to over \$1,000 in a very few days. This is sufficient to give the court jurisdiction on appeal. (*South Carolina v. Seymour*, 153 U. S. 353, 357.) There is directly involved in this suit the validity and the life of this agreement, or one similar to it. Out of this agreement directly springs the ability as well as the right to maintain these rates, and each company is interested in maintaining the validity of the agreement to the same extent as all the others. As against the agreement the Government represents the interest of the public, and thus the parties stand opposed to each other—the one in favor of dissolving and the other of maintaining the agreement.

Unlike the case of *Gibson v. Shufeldt* (122 U. S. 27), and the cases therein cited in the opinion of the court delivered by Mr. Justice Gray, the defendants here are jointly interested in the question, and it is not the case of a fund amounting to more than the requisite sum which is to be paid to different parties in sums less than the jurisdictional amount.

For the reasons above stated, we think the jurisdictional fact in regard to each defendant appears plainly and necessarily from the record and the stipulation, and that the duty is thus laid upon this court to entertain the appeal.

Coming to the merits of the suit, there are two important questions which demand our examination. They are, first, whether the above cited act of Congress (called herein the Trust Act) applies to and covers common carriers by railroad;

and, if so, second, does the agreement set forth in the bill violate any provision of that act?

As to the first question:

The language of the act includes *every* contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations. So far as the very terms of the statute go, they apply to any contract of the nature described. A contract therefore that is in restraint of trade or commerce is by the strict language of the act prohibited even though such contract is entered into between competing common carriers by railroad, and only for the purposes of thereby affecting traffic rates for the transportation of persons and property. If such an agreement restrain trade or commerce, it is prohibited by the statute, unless it can be said that an agreement, no matter what its terms, relating only to transportation cannot restrain trade or commerce. We see no escape from the conclusion that if any agreement of such a nature does restrain it, the agreement is condemned by this act. It cannot be denied that those who are engaged in the transportation of persons or property from one state to another are engaged in interstate commerce, and it would seem to follow that if such persons enter into agreements between themselves in regard to the compensation to be secured from the owners of the articles transported, such agreement would at least relate to the business of commerce, and might more or less restrain it. The point urged on the defendants' part is that the statute was not really intended to reach that kind of an agreement relating only to traffic rates entered into by competing common carriers by railroad; that it was intended to reach only those who were engaged in the manufacture or sale of articles of commerce, and who by means of trusts, combinations and conspiracies were engaged in affecting the supply or the price or the place of manufacture of such articles. The terms of the act do not bear out such construction. Railroad companies are instruments of commerce, and their business is commerce itself. (State Freight Tax Case, 15 Wall, 232, 275; Telegraph Co. v

Texas, 105 U. S. 460, at 464.) An act which prohibits the making of every contract, etc., in restraint of trade or commerce among the several states, would seem to cover by such language a contract between competing railroads, and relating to traffic rates for the transportation of articles of commerce between the States, provided such contract by its direct effect produces a restraint of trade or commerce. What amounts to a restraint within the meaning of the act if thus construed need not now be discussed.

We have held that the Trust Act did not apply to a company engaged in one State in the refining of sugar under the circumstances detailed in the case of the United States v. E. C. Knight Company (156 U. S. 1), because the refining of sugar under those circumstances bore no distinct relation to commerce between the States or with foreign nations. To exclude agreements as to rates by competing railroads for the transportation of articles of commerce between the States would leave little for the act to take effect upon.

Nor do we think that because the sixth section does not forfeit the property of the railroad company when merely engaged in the transportation of property owned under and which was the subject of a contract or combination mentioned in the first section, any ground is shown for holding the rest of the act inapplicable to carriers by railroad. It is not perceived why, if the rest of the act were intended to apply to such a carrier, the sixth section ought necessarily to have provided for the seizure and condemnation of the locomotives and cars of the carrier engaged in the transportation between the States of those articles of commerce owned as stated in that sixth section. There is some justice and propriety in forfeiting those articles, but we see none in forfeiting the locomotives or cars of the carrier simply because such carrier was transporting articles as described from one State to another, even though the carrier knew that they had been manufactured or sold under a contract or combination in violation of the act. In the case of a simple transportation of such articles the carrier would be guilty of no violation of any of the provisions of the

act. Why, therefore, would it follow that the sixth section should provide for the forfeiture of the property of the carrier if the rest of the act were intended to apply to it? To subject the locomotives and cars to forfeiture under such circumstances might also cause great confusion to the general business of the carrier and in that way inflict unmerited punishment upon the innocent owners of other property in the course of transportation in the same cars and drawn by the same locomotives. If the company itself violates the act, the penalties are sufficient as provided for therein.

But it is maintained that an agreement like the one in question on the part of the railroad companies is authorized by the Commerce Act, which is a special statute applicable only to railroads, and that the construction of the Trust Act (which is a general act) so as to include within its provisions the case of railroads, carries with it the repeal by implication of so much of the Commerce Act as authorized the agreement. It is added that there is no language in the Trust Act which is sufficiently plain to indicate a purpose to repeal those provisions of the Commerce Act which permit the agreement; that both acts may stand, the special or Commerce Act as relating solely to railroads and their proper regulation and management, while the later and general act will apply to all contracts of the nature therein described, entered into by anyone other than competing common carriers by railroad for the purpose of establishing rates of traffic for transportation. On a line with this reasoning it is said that if Congress had intended to in any manner affect the railroad carrier as governed by the Commerce Act, it would have amended that act directly and in terms, and not have left it as a question of construction to be determined whether so important a change in the commerce statute had been accomplished by the passage of the statute relating to trusts.

The first answer to this argument is that, in our opinion, the Commerce Act does not authorize an agreement of this nature. It may not in terms prohibit, but it is far from conferring either directly or by implication any authority to make it.

If the agreement be legal it does not owe its validity to any provision of the Commerce Act, and if illegal it is not made so by that act. The fifth section prohibits what is termed "pooling," but there is no express provision in the act prohibiting the maintenance of traffic rates among competing roads by making such an agreement as this, nor is there any provision which permits it. Prior to the passage of the act the companies had sometimes endeavored to regulate competition and to maintain rates by pooling arrangements, and in the act that kind of an arrangement was forbidden. After its passage other devices were resorted to for the purpose of curbing competition and maintaining rates. The general nature of a contract, like the one before us, is not mentioned in or provided for by the act. The provisions of that act look to the prevention of discrimination, to the furnishing of equal facilities for the interchange of traffic, to the rate of compensation for what is termed the long and the short haul, to the attainment of a continuous passage from the point of shipment to the point of destination at a known and published schedule, and, in the language of counsel for the defendants, "without reference to the location of those points or the lines over which it is necessary for the traffic to pass," to procuring uniformity of rates charged by each company to its patrons, and to other objects of a similar nature. The act was not directed to the securing of uniformity of rates to be charged by competing companies, nor was there any provision therein as to a maximum or minimum of rates. Competing and non-connecting roads are not authorized by this statute to make an agreement like this one.

As the Commerce Act does not authorize this agreement, argument against a repeal by implication, of the provisions of the act which it is alleged grant such authority, becomes ineffective. There is no repeal in the case, and both statutes may stand, as neither is inconsistent with the other.

It is plain, also, that an amendment of the Commerce Act would not be an appropriate method of enacting the legislation contained in the Trust Act, for the reason that the latter act

includes other subjects in addition to the contracts of or combinations among railroads, and is addressed to the prohibition of other contracts besides those relating to transportation. The omission, therefore, to amend the Commerce Act furnishes no reason for claiming that the latter statute does not apply to railroad transportation. Although the commerce statute may be described as a general code for the regulation and government of railroads upon the subjects treated of therein, it cannot be contended that it furnishes a complete and perfect set of rules and regulations which are to govern them in all cases, and that any subsequent act in relation to them must, when passed, in effect amend or repeal some provision of that statute. The statute does not cover all cases concerning transportation by railroad and all contracts relating thereto. It does not purport to cover such an extensive field.

The existence of agreements similar to this one may have been known to Congress at the time it passed the Commerce Act, although we are not aware, from the record, that an agreement of this kind had ever been made and publicly known prior to the passage of the Commerce Act. Yet if it had been known to Congress, its omission to prohibit it at that time, while prohibiting the pooling arrangements, is no reason for assuming that when passing the Trust Act it meant to except all contracts of railroad companies in regard to traffic rates from the operation of such act. Congress, for its own reasons, even if aware of the existence of such agreements, did not see fit when it passed the Commerce Act to prohibit them with regard to railroad companies alone, and the act was not an appropriate place for general legislation on the subject. And at that time, and for several years thereafter, Congress did not think proper to legislate upon the subject at all. Finally it passed this Trust Act, and in our opinion no obstacle to its application to contracts relating to transportation by railroads is to be found in the fact that the Commerce Act had been passed several years before, in which the entering into such agreements was not in terms prohibited.

It is also urged that the debates in Congress show beyond

a doubt that the act as passed does not include railroads. Counsel for defendants refer in considerable detail to its history from the time of its introduction in the Senate to its final passage. As the act originally passed the Senate the first section was in substance as it stands at present in the statute. On its receipt by the House that body proposed an amendment, by which it was in terms made unlawful to enter into any contract for the purpose of preventing competition in the transportation of persons or property. As thus amended the bill went back to the Senate, which itself amended the amendment by making the act apply to any such contract as tended to raise prices for transportation above what was just and reasonable. This amendment by the Senate of the amendment proposed by the House was disagreed to by that body. The amendments were then considered by conference committees, and the first conference committee reported to each house in favor of the amendment of the Senate. This report was disagreed to and another committee appointed, which agreed to strike out both amendments and leave the bill as it stood when it first passed the Senate, and that report was finally adopted, and the bill thus passed.

Looking at the debates during the various times when the bill was before the Senate and the House, both on its original passage by the Senate and upon the report from the conference committees, it is seen that various views were declared in regard to the legal import of the act. Some of the members of the House wanted it placed beyond doubt or cavil that contracts in relation to the transportation of persons and property were included in the bill. Some thought the amendment unnecessary, as the language of the act already covered it, and some refused to vote for the amendment or for the bill if the amendments were adopted, on the ground that it would then interfere with the Interstate Commerce Act and tend to create confusion as to the meaning of each act. Senator Hoar (who was a member of the first committee of conference from the Senate), when reporting the result arrived at by the Judiciary Committee recommending the adoption of the House amend-

ment, said: "The other clause of the House amendment is that contracts or agreements entered into for the purpose of preventing competition in the transportation of persons or property from one State or Territory into another shall be deemed unlawful. That the committee recommend shall be concurred in. *We suppose that it is already covered by the bill as it stands*; that is, that transportation is as much trade or commerce among the several States as the sale of goods in one State to be delivered in another, and, therefore, that it is covered already by the bill as it stands. But there is no harm in agreeing in an amendment which expressly describes it, and an objection to the amendment might be construed as if the Senate did not mean to include it; so we let it stand."

Looking simply at the history of the bill from the time it was introduced in the Senate until it was finally passed, it would be impossible to say what were the views of a majority of the members of each house in relation to the meaning of the act. It cannot be said that a majority of both houses did not agree with Senator Hoar in his views as to the construction to be given to the act as it passed the Senate. All that can be determined from the debates and reports is that various members had various views, and we are left to determine the meaning of this act as we determine the meaning of other acts from the language used therein.

There is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. (*United States v. Union Pacific Railroad Company*, 91 U. S. 72, at 79; *Aldridge v. Williams*, 3 Howard, 9-24, Taney, chief justice; *Mitchell v. Great Works Milling & Manufacturing Company*, 2 Story, 648, at page 653; *Queen v. Hertford College*, 3 Q. B. D. 693, at page 707.)

The reason is that it is impossible to determine with certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did; and those who spoke

might differ from each other; the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed. (Cases cited, *supra*.) If such resort be had, we are still unable to see that the railroads were not intended to be included in this legislation.

It is said that Congress had very different matters in view and very different objects to accomplish in the passage of the act in question; that a number of combinations in the form of trusts and conspiracies in restraint of trade were to be found throughout the country, and that it was impossible for the State governments to successfully cope with them because of their commercial character and of their business extension through the different States of the Union. Among these trusts it was said in Congress were the beef trust, the Standard Oil trust, the steel trust, the barbed fence wire trust, the sugar trust, the cordage trust, the cotton seed oil trust, the whiskey trust and many others, and these trusts it was stated had assumed an importance and had acquired a power which were dangerous to the whole country, and that their existence was directly antagonistic to its peace and prosperity. To combinations and conspiracies of this kind it is contended that the act in question was directed, and not to the combinations of competing railroads to keep up their prices to a reasonable sum for the transportation of persons and property. It is true that many and various trusts were in existence at the time of the passage of the act, and it was probably sought to cover them by the provisions of the act. Many of them had rendered themselves offensive by the manner in which they exercised the great power that combined capital gave them. But a further investigation of "the history of the times" shows also that those trusts were not the only associations controlling a great combination of capital which had caused complaint at the manner in which their business was conducted. There were many and loud complaints from some portions of the public regarding the railroads and the prices they were charging for the service they rendered, and it was alleged that the

prices for the transportation of persons and articles of commerce were unduly and improperly enhanced by combinations among the different roads. Whether these complaints were well or ill founded we do not presume at this time and under these circumstances to determine or to discuss. It is simply for the purpose of answering the statement that it was only to trusts of the nature above set forth that this legislation was directed, that the subject of the opinions of the people in regard to the actions of the railroad companies in this particular is referred to. A reference to this history of the times does not, as we think, furnish us with any strong reason for believing that it was only trusts that were in the minds of the members of Congress, and that railroads and their manner of doing business were wholly excluded therefrom.

Our attention is also called to one of the rules for the construction of statutes which has been approved by this court; and while it is the duty of courts to ascertain the meaning of the Legislature from the words used in the statute and the subject-matter to which it relates, there is an equal duty to restrict the meaning of general words whenever it is found necessary to do so in order to carry out the legislative intent. (*Brewer v. Blougher*, 14 Pet. 178, 198; *Petri v. National Bank of Chicago*, 142 U. S. 644, 650; *McKee v. United States*, 164 U. S. 287.) It is therefore urged that if by a strict construction of the language of this statute it may be made to include railroads, yet it is evident from other considerations now to be mentioned that the real meaning of the Legislature would not include them, and they must for that reason be excluded. It is said that this meaning is plainly to be inferred because of fundamental differences both in an economic way and before the law between trade and manufacture on the one hand and railroad transportation on the other. Among these differences are the public character of railroad business, and as a result the peculiar power of control and regulation possessed by the State over railroad companies. The trader or manufacturer, on the other hand carries on an entirely private business, and can sell to whom he pleases; he may charge different prices for the

same article to different individuals; he may charge as much as he can get for the article in which he deals, whether the price be reasonable or unreasonable; he may make such discrimination in his business as he chooses, and he may cease to do any business whenever his choice lies in that direction; while, on the contrary, a railroad company must transport all persons and property that come to it, and it must do so at the same price for the same service, and the price must be reasonable, and it cannot at its will discontinue its business. It is also urged that there are evils arising from unrestricted competition in regard to railroads which do not exist in regard to any other kind of property; that it is so admitted by the latest and best writers on the subject, and that practical experience of the results of unrestricted competition among railroads tends directly to the same view; that the difference between railroad property on the one hand, and all other kinds of property on the other hand, is so plain that entirely different economic results follow from unrestricted competition among railroads from those which obtain in regard to all other kinds of business. It is also said that the contemporaneous industrial history of the country, the legal situation in regard to railroad properties at the time of the enactment of this statute, its legislative history, the ancient and constantly maintained different legal effect and policy regarding railway transportation and ordinary trade and manufacture, together with a just regard for interests of such enormous magnitude as are represented by the railroads of the country, all tend to show that Congress, in passing the Anti-trust Act, never could have contemplated the inclusion of railroads within its provisions. It is, therefore, claimed to be the duty of the court, in carrying out the rule of statutory construction, above stated, to restrict the meaning of these general words of the statute which would include railroads, because, from the considerations above mentioned, it is plain that Congress never intended that railroads should be included.

Many of the foregoing assertions may be well founded, while at the same time the correctness of the conclusions

sought to be drawn therefrom need not be conceded. The points of difference between the railroad and other corporations are many and great. It cannot be disputed that a railroad is a public corporation, and its business pertains to and greatly affects the public, and that it is of a public nature. The company may not charge unreasonable prices for transportation, nor can it make unjust discriminations, nor select its patrons, nor go out of business when it chooses, while a mere trading or manufacturing company may do all these things. But the very fact of the public character of a railroad would itself seem to call for special care by the Legislature in regard to its conduct, so that its business should be carried on with as much reference to the proper and fair interests of the public as possible. While the points of difference just mentioned and others do exist between the two classes of corporations it must be remembered they have also some points of resemblance. Trading, manufacturing and railroad corporations are all engaged in the transaction of business with regard to articles of trade and commerce, each in its special sphere, either in manufacturing or trading in commodities or in their transportation by rail. A contract among those engaged in the latter business by which the prices for the transportation of commodities traded in or manufactured by the others is greatly enhanced from what it otherwise would if free competition were the rule, affects and to a certain extent restricts trade and commerce, and affects the price of the commodity. Of this there can be no question. Manufacturing or trading companies may also affect prices by joining together in forming a trust or other combination, and by making agreements in restraint of trade and commerce, which when carried out affect the interests of the public. Why should not a railroad company be included in general legislation aimed at the prevention of that kind of agreement made in restraint of trade, which may exist in all companies, which is substantially of the same nature wherever found, and which tends very much towards the same results whether put in practice by a trading and manufacturing or by a railroad company? It is true, the results

of trusts, or combinations of that nature, may be different in different kinds of corporations, and yet they all have an essential similarity, and have been induced by motives of individual or corporate aggrandizement as against the public interest. In business or trading combinations they may even temporarily, or perhaps permanently, reduce the price of the article traded in or manufactured, by reducing the expense inseparable from the running of many different companies for the same purpose. Trade or commerce under these circumstances may nevertheless be badly and unfortunately restrained by driving out of business the small dealers and worthy men whose lives have been spent therein, and who might be unable to readjust themselves to their altered surroundings. Mere reduction in the price of the commodity dealt in might be dearly paid for by the ruin of such a class and the absorption of control over one commodity by an all-powerful combination of capital. In any great and extended change in the manner or method of doing business it seems to be an inevitable necessity that distress and, perhaps, ruin, shall be its accompaniment in regard to some of those who were engaged in the old methods. A change from stage coaches and canal boats to railroads threw at once a large number of men out of employment; changes from hand labor to that of machinery; and from operating machinery by hand to the application of steam for such purpose leave behind them for the time a number of men who must seek other avenues of livelihood. These are misfortunes which seem to be the necessary accompaniment of all great industrial changes. It takes time to effect a readjustment of industrial life so that those who are thrown out of their old employment, by reason of such changes as we have spoken of, may find opportunities for labor in other departments than those to which they have been accustomed. It is a misfortune, but yet in such cases it seems to be the inevitable accompaniment of change and improvement.

It is wholly different, however, when such changes are effected by combinations of capital, whose purpose in com-

binning is to control the production or manufacture of any particular article in the market, and by such control dictate the price at which the article shall be sold, the effect being to drive out of business all the small dealers in the commodity and to render the public subject to the decision of the combination as to what price shall be paid for the article. In this light it is not material that the price of an article may be lowered. It is in the power of the combination to raise it, and the result in any event is unfortunate for the country by depriving it of the services of a large number of small but independent dealers who were familiar with the business and who had spent their lives in it, and who supported themselves and their families from the small profits realized therein. Whether they be able to find other avenues to earn their livelihood is not so material, because it is not for the real prosperity of any country that such changes should occur which result in transferring an independent business man, the head of his establishment, small though it might be, into a mere servant or agent of a corporation for selling the commodities which he once manufactured or dealt in, having no voice in shaping the business policy of the company and bound to obey orders issued by others. Nor is it for the substantial interests of the country that any one commodity should be within the sole power and subject to the sole will of one powerful combination of capital. Congress has, so far as its jurisdiction extends, prohibited all contracts or combinations in the form of trusts entered into for the purpose of restraining trade and commerce. The results naturally flowing from a contract or combination in restraint of trade or commerce, when entered into by a manufacturing or trading company such as above stated, while differing somewhat from those which may follow a contract to keep up transportation rates by railroads, are nevertheless of the same nature and kind, and the contracts themselves do not so far differ in their nature that they may not all be treated alike and be condemned in common. It is entirely appropriate generally to subject corporations or persons engaged in trading or manufacturing

to different rules from those applicable to railroads in their transportation business, but when the evil to be remedied is similar in both kinds of corporations, such as contracts which are unquestionably in restraint of trade, we see no reason why similar rules should not be promulgated in regard to both, and both be covered in the same statute by general language sufficiently broad to include them both. We see nothing either in contemporaneous history, in the legal situation at the time of the passage of the statute, in its legislative history, or in any general difference in the nature or kind of these trading or manufacturing companies from railroad companies, which would lead us to the conclusion that it cannot be supposed that the Legislature in prohibiting the making of contracts in restraint of trade intended to include railroads within the purview of that act.

Neither is the statute, in our judgment, so uncertain in its meaning or its language so vague that it ought not to be held applicable to railroads. It prohibits contracts, combinations, etc., in restraint of trade or commerce. Transporting commodities is commerce, and if from one State to or through another it is interstate commerce. To be reached by the Federal statute it must be commerce among the several States or with foreign nations. When the act prohibits contracts in restraint of trade or commerce, the plain meaning of the language used includes contracts which relate to either or both subjects. Both trade and commerce are included so long as each relates to that which is interstate or foreign. Transportation of commodities among the several States or with foreign nations falls within the description of the words of the statute with regard to that subject, and there is also included in that language that kind of trade in commodities among the States or with foreign nations which is not confined to their mere transportation. It includes their purchase and sale. Precisely at what point in the course of the trade in or manufacture of commodities the statute may have effect upon them or upon contracts relating to them may be somewhat difficult to determine, but interstate trans-

portation presents no difficulties. In *United States v. E. C. Knight Company* (156 U. S. 1), heretofore cited, it was in substance held, reiterating the language of Mr. Justice Lamar in *Kidd v. Pearson* (128 U. S. 1), that the intent to manufacture or export a manufactured article to foreign nations or to send it to another State did not determine the time when the article or product passed from the control of the State and belonged to commerce. The difficulty in determining that question, however, is no reason for denying effect to language, which, by its terms, plainly includes the transportation of commodities among the several States or with foreign nations, and which may also be the subject of contracts or combinations in restraint of such commerce. The difficulty of the subject, so far as the trade in or the manufacture of commodities is concerned, arises from the limited control which Congress has over the matter of trade or manufacture. It was said by Mr. Justice Lamar in *Kidd v. Pearson* (*supra*): "If it be held that the term" (commerce) "includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include the productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries and mining—in short, every branch of human industry."

In the *Knight Company* case (*supra*) it was said that this statute applied to monopolies in restraint of interstate or international trade or commerce, and not to monopolies in manufacture even of a necessary of life. It is readily seen from these cases that if the act do not apply to the transportation of commodities by railroads from one State to another or to foreign nations, its application is so greatly limited that the whole act might as well be held inoperative.

Still another ground for holding the act inapplicable is urged, and that is that the language covers only contracts or combinations like trusts or those which, while not exactly

trusts, are otherwise of the same form or nature. This is clearly not so.

While the statute prohibits all combinations in the form of trusts or otherwise, the limitation is not confined to that form alone. All combinations which are in restraint of trade or commerce are prohibited, whether in the form of trusts or in any other form whatever.

We think, after a careful examination, that the statute covers, and was intended to cover, common carriers by railroad.

Second—The next question to be discussed is as to what is the true construction of the statute, assuming that it applies to common carriers by railroad. What is the meaning of the language as used in the statute, that "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations, is hereby declared to be illegal?" Is it confined to a contract or combination which is only in unreasonable restraint of trade or commerce, or does it include what the language of the act plainly and in terms covers all contracts of that nature?

We are asked to regard the title of this act as indicative of its purpose to include only those contracts which were unlawful at common law, but which require the sanction of a Federal statute in order to be dealt with in a Federal court. It is said that when terms which are known to the common law are used in a Federal statute those terms are to be given the same meaning that they received at common law, and that when the language of the title is "to protect trade and commerce against unlawful restraints and monopolies," it means those restraints and monopolies which the common law regarded as unlawful, and which were to be prohibited by the Federal statute. We are of opinion that the language used in the title refers to and includes and was intended to include those restraints and monopolies which are made unlawful in the body of the statute. It is to the statute itself that resort must be had to learn the meaning thereof, though a resort to the title here

creates no doubt about the meaning of and does not alter the plain language contained in its text.

It is now with much amplification of argument urged that the statute in declaring illegal every combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce, does not mean what the language used therein plainly imports, but that it only means to declare illegal any such contract which is in unreasonable restraint of trade, while leaving all others unaffected by the provisions of the act; that the common law meaning of the term "contract in restraint of trade" includes only such contracts as are in unreasonable restraint of trade, and when that term is used in the Federal statute it is not intended to include all contracts in restraint of trade, but only those which are in unreasonable restraint thereof.

The term is not of such limited signification. Contracts in restraint of trade have been known and spoken of for hundreds of years, both in England and in this country, and the term includes all kinds of those contracts which in fact restrain or may restrain trade. Some of such contracts have been held void and unenforceable in the courts by reason of their restraint being unreasonable, while others have been held valid because they were not of that nature. A contract may be in restraint of trade and still be valid at common law. Although valid, it is nevertheless a contract in restraint of trade, and would be so described either at common law or elsewhere. By the simple use of the term contract in restraint of trade, all contracts of that nature, whether valid or otherwise, would be included, and not alone that kind of contract which was invalid and unenforceable as being in unreasonable restraint of trade. When, therefore, the body of a act pronounces as illegal every contract or combination in restraint of trade or commerce among the several states, etc., the plain and ordinary meaning of such language is not limited to that kind of contract alone which is in unreasonable restraint of trade, but all contracts are included in such language, and no exception or limitation can be added without placing in the act that which has been omitted by Congress.

Proceeding, however, upon the theory that the statute did not mean what its plain language imported, and that it intended in its prohibition to denounce as illegal only those contracts which were in unreasonable restraint of trade, the courts below have made an exhaustive investigation as to the general rules which guide courts in declaring contracts to be void as being in restraint of trade, and therefore against the public policy of the country. In the course of their discussion of that subject they have shown that there has been a gradual though great alteration in the extent of the liberty granted to the vendor of property in agreeing, as part consideration for his sale, not to enter into the same kind of business for a certain time or within a certain territory. So long as the sale was the bona fide consideration for the promise and was not made a mere excuse for an evasion of the rule itself, the later authorities, both in England and in this country, exhibit a strong tendency toward enabling the parties to make such a contract in relation to the sale of property, including an agreement not to enter into the same kind of business, as they may think proper, and this with the view to granting to a vendor the freest opportunity to obtain the largest consideration for the sale of that which is his own. A contract which is the mere accompaniment of the sale of property, and thus entered into for the purpose of enhancing the price at which the vendor sells it, which in effect is collateral to such sale, and where the main purpose of the whole contract is accomplished by such sale, might not be included within the letter or spirit of the statute in question. But we cannot see how the statute can be limited, as it has been by the courts below, without reading into its text an exception which alters the natural meaning of the language used, and that, too, upon a most material point, and where no sufficient reason is shown for believing that such alteration would make the statute more in accord with the intent of the lawmaking body that enacted it.

The great stress of the argument for the defendants on this branch of the case has been to show, if possible, some reason in the attendant circumstances, or some facts existing in

the nature of railroad property and business upon which to found the claim, that although by the language of the statute agreements or combinations in restraint of trade or commerce are included, the statute really means to declare illegal only those contracts, etc., which are in unreasonable restraint of trade. In order to do this the defendants call attention to many facts which they have already referred to in their argument, upon the point that railroads were not included at all in the statute. They again draw attention to the fact of the peculiar nature of railroad property. When a railroad is once built, it is said, it must be kept in operation; it must transport property, when necessary in order to keep its business, at the smallest price and for the narrowest profit, or even for no profit, provided running expenses can be paid, rather than not to do the work; that railroad property cannot be altered for use for any other purpose, at least without such loss as may fairly be called destructive; that competition while, perhaps, right and proper in other business, simply leads in railroad business to financial ruin and insolvency, and to the operation of the road by receivers in the interest of its creditors instead of in that of its owners and the public; that a contest between a receiver of an insolvent corporation and one which is still solvent tends to ruin the latter company, while being of no benefit to the former; that a receiver is only bound to pay operating expenses so he can compete with the solvent company and oblige it to come down to prices incompatible with any profit for the work done, and until ruin overtakes it to the destruction of innocent stockholders and the impairment of the public interests.

To the question why competition should necessarily be conducted to such an extent as to result in this relentless and continued war, to eventuate only in the financial ruin of one or all of the companies indulging in it, the answer is made that if competing railroad companies be left subject to the sway of free and unrestricted competition the results above foreshadowed necessarily happen from the nature of the case; that competition being the rule, each company will seek business to the

extent of its power, and will underbid its rival in order to get the business, and such underbidding will act and react upon each company until the prices are so reduced as to make it impossible to prosper or live under them; that it is too much to ask of human nature for one company to insist upon charges sufficiently high to afford a reasonable compensation, and while doing so to see its patrons leave for rival roads who are obtaining its business by offering less rates for doing it than can be afforded and a fair profit obtained therefrom. Sooner than experience ruin from mere inanition, efforts will be made in the direction of meeting the underbidding of its rival until both shall end in ruin. The only refuge, it is said, from this wretched end lies in the power of competing roads agreeing among themselves to keep up prices for transportation to such sums as shall be reasonable in themselves, so that companies may be allowed to save themselves from themselves, and to agree not to attack each other, but to keep up reasonable and living rates for the services performed. It is said that as railroads have a right to charge reasonable rates it must follow that a contract among themselves to keep up their charges to that extent is valid. Viewed in the light of all these facts it is broadly and confidently asserted that it is impossible to believe that Congress or any other intelligent and honest legislative body could ever have intended to include all contracts or combinations in restraint of trade, and as a consequence thereof to prohibit competing railways from agreeing among themselves to keep up prices for transportation to such a rate as should be fair and reasonable.

These arguments it must be confessed bear with much force upon the policy of an act which should prevent a general agreement upon the question of rates among competing railroad companies to the extent simply of maintaining those rates which were reasonable and fair.

There is another side to this question, however, and it may not be amiss to refer to one or two facts which tend to somewhat modify and alter the light in which the subject should be regarded. If only that kind of contract which is in unrea-

sonable restraint of trade be within the meaning of the statute, and declared therein to be illegal, it is at once apparent that the subject of what is a reasonable rate is attended with great uncertainty. What is a proper standard by which to judge the fact of reasonable rates? Must the rate be so high as to enable the return for the whole business done to amount to a sum sufficient to afford the shareholder a fair and reasonable profit upon his investment? If so, what is a fair and reasonable profit? That depends sometimes upon the risk incurred, and the rate itself differs in different localities; which is the one to which reference is to be made as the standard? Or is the reasonableness of the profit to be limited to a fair return upon the capital that would have been sufficient to build and equip the road, if honestly expended? Or is still another standard to be created, and the reasonableness of the charges tried by the cost of the carriage of the article and a reasonable profit allowed on that? And in such case would contribution to a sinking fund to make repairs upon the roadbed and renewal of cars, etc., be assumed as a proper item? Or is the reasonableness of the charge to be tested by reference to the charges for the transportation of the same kind of property made by other roads similarly situated? If the latter, a combination among such roads as to rates would, of course, furnish no means of answering the question. It is quite apparent, therefore, that it is exceedingly difficult to formulate even the terms of the rule itself which should govern in the matter of determining what would be reasonable rates for transportation. While even after the standard should be determined there is such an infinite variety of facts entering into the question of what is a reasonable rate, no matter what standard is adopted, that any individual shipper would in most cases be apt to abandon the effort to show the unreasonable character of a charge, sooner than hazard the great expense in time and money necessary to prove the fact, and at the same time incur the ill-will of the road itself in all his future dealings with it. To say, therefore, that the act excludes agreements which are not in unreasonable restraint of trade, and which tend simply to

keep up reasonable rates for transportation, is substantially to leave the question of reasonableness to the companies themselves.

It must also be remembered that railways are public corporations organized for public purposes, granted valuable franchises and privileges, among which the right to take the private property of the citizen *in invitum* is not the least (*Cherokee Nation v. Southern Kansas Railway Company*, 135 U. S. 641, 657); that many of them are the donees of large tracts of public lands and of gifts of money by municipal corporations, and that they all primarily owe duties to the public of a higher nature even than that of earning large dividends for their shareholders. The business which the railroads do is of a public nature, closely affecting almost all classes in the community—the farmer, the artisan, the manufacturer and the trader. It is of such a public nature that it may well be doubted, to say the least, whether any contract which imposes any restraint upon its business would not be prejudicial to the public interest.

We recognize the argument upon the part of the defendants that restraint upon the business of railroads will not be prejudicial to the public interest so long as such restraint provides for reasonable rates for transportation and prevents the deadly competition so liable to result in the ruin of the roads and to thereby impair their usefulness to the public, and in that way to prejudice the public interest. But it must be remembered that these results are by no means admitted with unanimity; on the contrary, they are earnestly and warmly denied on the part of the public and by those who assume to defend its interests both in and out of Congress. Competition, they urge, is a necessity for the purpose of securing in the end just and proper rates.

It was said in *Gibbs v. Baltimore Gas Company* (130 U. S. 396, at page 408), by Mr. Chief Justice Fuller, as follows: "The supply of illuminating gas is a business of a public nature to meet a public necessity. It is not a business like that of an ordinary corporation engaged in the manufacture of arti-

cles that may be furnished by individual effort. (New Orleans Gas Company v. Louisiana Light Company, 115 U. S. 650; Louisville Gas Company v. Citizens' Gas Company, 115 U. S. 683; Shepard v. Milwaukee Gas Company, 6 Wisconsin, 539; Chicago Gas Light & Coke Company v. People's Gas Light & Coke Company, 121 Illinois, 530; St. Louis v. St. Louis Gas Light Company, 70 Missouri, 69). Hence, while it is justly urged that those rules which say that a given contract is against public policy, should not be arbitrarily extended so as to interfere with the freedom of contract (Printing, etc., Registering Company v. Samson, L. R. 19 Eq. 462), yet in the instance of business of such a character that it presumably cannot be restrained to any extent whatever without prejudice to the public interest, courts decline to enforce or sustain contracts imposing such restraint, however partial, because in contravention of public policy. This subject is much considered, and the authorities cited in West Virginia Transportation Company v. Ohio River Pipe Line Company (22 West Va. 600); Chicago, etc., Gas Company v. People's Gas Company (121 Illinois, 530); Western Union Telegraph Company v. American Union Telegraph Company (65 Georgia, 160)."

It is true in the Gibbs case there was a special statute which prohibited the company from entering into any consolidation, combination or contract with any other gas company whatever, and it was provided that any attempt to do so or to make such combination or contract should be utterly null and void. The above extract from the opinion of the court is made for the purpose of showing the difference which exists between a private and a public corporation; that kind of a public corporation which while doing business for remuneration is yet so connected in interest with the public as to give a public character to its business, and it is seen that while, in the absence of a statute prohibiting them, contracts of private individuals or corporations touching upon restraints in trade must be unreasonable in their nature to be held void, different considerations obtain in the case of public corporations like those of railroads where it well may be that any restraint upon a busi-

ness of that character as affecting its rates of transportation must thereby be prejudicial to the public interest.

The plaintiffs are, however, under no obligation in order to maintain this action to show that by the common law all agreements among competing railroad companies to keep up rates to such as are reasonable were void as in restraint of trade or commerce. There are many cases which look in that direction if they do not precisely decide that point. Some of them are referred to in the opinion in the Baltimore Gas Company case, above cited. The case of the Mogul Steamship Company v. McGregor (21 Q. B. D. 544; 23 Do. 598; 1892, Appeal cases, 25), has been cited by the courts below as holding in principle that contracts of this nature are valid at common law. The agreement held valid there was an agreement for lowering rates of transportation among the parties thereto, and it was entered into for the purpose of driving out of trade rival steamships in order that thereafter the rates might be advanced. The English courts held that the agreement was not a conspiracy, and that it was valid, although the result aimed at was to drive a rival out of the field, because so long as the injury to such rival was not the sole reason for the agreement, but self-interest the predominating motive, there was nothing wrong in law with an agreement of that kind. But assuming that agreements of this nature are not void at common law and that the various cases cited by the learned courts below show it, the answer to the statement of their validity now is to be found in the terms of the statute under consideration. The provisions of the Interstate Commerce Act relating to reasonable rates, discriminations, etc., do not authorize such an agreement as this, nor do they authorize any other agreements which would be inconsistent with the provisions of this act.

The general reasons for holding agreements of this nature to be invalid even at common law, on the part of railroad companies are quite strong, if not entirely conclusive.

Considering the public character of such corporations, the privileges and franchises which they have received from the public in order that they might transact business, and bearing

in mind how closely and immediately the question of rates for transportation affects the whole public, it may be urged that Congress had in mind all the difficulties which we have before suggested of proving the unreasonableness of the rate, and might, in consideration of all the circumstances, have deliberately decided to prohibit all agreements and combinations in restraint of trade or commerce, regardless of the question whether such agreements were reasonable or the reverse.

It is true that, as to a majority of those living along its line, each railroad is a monopoly. Upon the subject now under consideration it is well said by Judge Oliver P. Shiras, United States district judge, northern district of Iowa, in his very able dissenting opinion in this case in the United States Circuit Court of Appeals, as follows:

"As to the majority of the community living along its line, each railway company has a monopoly of the business demanding transportation as one of its elements. By reason of this fact the action of this corporation in establishing the rates to be charged largely influences the net profit coming to the farmer, the manufacturer and the merchant, from the sale of the products of the farm, the workshop and manufactory, and of the merchandise purchased and resold, and also largely influences the price to be paid by everyone who consumes any of the property transported over the line of railway. There is no other line of business carried on in our midst which is so intimately connected with the public as that conducted by the railways of the country. . . . A railway corporation engaged in the transportation of the persons and property of the community is always carrying on a public business which at all times directly affects the public welfare. All contracts or combinations entered into between railway corporations intended to regulate the rates to be charged the public for the service rendered, must of necessity affect the public interests. By reason of this marked distinction existing between enterprises inherently public in their character and those of a private nature, and further by reason of the difference between private persons and corporations engaged

in private pursuits, who owe no direct or primary duty to the public and public corporations created for the express purpose of carrying on public enterprises, and which, in consideration of the public powers exercised in their behalf, are under obligations to carry on the work intrusted to their management primarily in the interest and for the benefit of the community, it seems clear to me that the same test is not applicable to both classes of business and corporations in determining the validity of contracts and combinations entered into by those engaged therein. . . . In the opinion of the court are found citations from the reports of the Interstate Commerce Commission in which are depicted the evils that are occasioned to the railway companies and the public by warfares over rate charges, and the advantages that are gained in many directions by proper conference and concert of action among the competing lines. It may be entirely true that as we proceed in the development of the policy of public control over railway traffic, methods will be advised and put in operation by legislative enactment whereby railway companies and the public may be protected against the evils arising from unrestricted competition and from rate wars which unsettle the business of the community, but I fail to perceive the force of the argument that because railway companies *through their own action cause evils to themselves* and the public by sudden changes or reductions in tariff rates they must be permitted to deprive the community of the benefit of competition in securing reasonable rates for the transportation of the products of the country. Competition, free and unrestricted, is the general rule which governs all the ordinary business pursuits and transactions of life. Evils, as well as benefits, result therefrom. In the fierce heat of competition the stronger competitor may crush out the weaker; fluctuations in prices may be caused that result in wreck and disaster; yet, balancing the benefits as against the evils, the law of competition remains as a controlling element in the business world. That free and unrestricted competition in the matter of railroad charges may be productive of evils does not militate against the fact that such is the law now

governing the subject. No law can be enacted nor system be devised for the control of human affairs that in its enforcement does not produce some evil results, no matter how beneficial its general purpose may be. There are benefits and there are evils which result from the operation of the law of free competition between railway companies. The time may come when the companies will be relieved from the operation of this law, but they cannot, by combination and agreements among themselves, bring about this change. The fact that the provisions of the Interstate Commerce Act may have changed in many respects the conduct of the companies in the carrying on of the public business they are engaged in does not show that it was the intent of Congress, in the enactment of that statute, to clothe railway companies with the right to combine together for the purpose of avoiding the effects of competition on the subject of rates."

The whole opinion is a remarkably strong presentation of the views of the learned judge who wrote it.

Still, again, it is answered that the effects of free competition among railroad companies, as described by the counsel for the companies themselves in the course of their argument, are greatly exaggerated. According to that argument, the moment an agreement of this nature is prohibited the railroads commence to cut their rates, and they cease only with their utter financial ruin, leaving, perhaps, one to raise rates indefinitely when its rivals have been driven away. It is said that this is a most overdrawn statement, and that while absolutely free competition may have in some instances and for a time resulted in injury to some of the railroads, it is not at all clear that the general result has been other than beneficial to the whole public, and not in the long run detrimental to the prosperity of the roads. It is matter of common knowledge that agreements as to rates have been continually made of late years, and that complaints of each company in regard to the violation of such agreements by its rivals have been frequent and persistent. Rate wars go on notwithstanding any agreement to the contrary, and the struggle for business among

competing roads keeps on, and in the nature of things will keep on, any alleged agreement to the contrary notwithstanding, and it is only by the exercise of good sense and by the presence of a common interest that railroads, without entering into any affirmative agreement in regard thereto, will keep within the limit of exacting a fair and reasonable return for services rendered. These agreements have never been found really effectual for any extended period.

The Interstate Commerce Commission, from whose reports quotations have been quite freely made by counsel for the purpose of proving the views of its learned members in regard to this subject, has never distinctly stated that agreements among competing railroads to maintain prices are to be commended, or that the general effect is to be regarded as beneficial. They have stated in their fourth annual report that competition may degenerate into rate wars, and that such wars are as unsettling to the business of the country as they are mischievous to the carriers, and that the spirit of existing law is against them. They then add: "Agreements between railroad companies which from time to time they have entered into with a view to prevent such occurrences have never been found effectual, and for the very sufficient reason, that the mental reservations in forming them have been quite as numerous and more influential than the written stipulations." It would seem true, therefore, that there is no guaranty of financial health to be found in entering into agreements for the maintenance of rates, nor is financial ruin or insolvency the necessary result of their absence.

The claim that the company has the right to charge reasonable rates, and that, therefore, it has the right to enter into a combination with competing roads to maintain such rates, cannot be admitted. The conclusion does not follow from an admission of the premise. What one company may do in the way of charging reasonable rates is radically different from entering into an agreement with other and competing roads to keep up the rates to that point. If there be any competition the extent of the charge for the service will be seriously af-

fectured by that fact. Competition will itself bring charges down to what may be reasonable, while in the case of an agreement to keep prices up, competition is allowed no play; it is shut out, and the rate is practically fixed by the companies themselves by virtue of the agreement, so long as they abide by it.

As a result of this review of the situation, we find two very widely divergent views of the effects which might be expected to result from declaring illegal all contracts in restraint of trade, etc.; one side predicting financial disaster and ruin to competing railroads, including thereby the ruin of shareholders, the destruction of immensely valuable properties, and the consequent prejudice to the public interest; while on the other side predictions equally earnest are made that no such mournful results will follow, and it is urged that there is a necessity, in order that the public interest may be fairly and justly protected, to allow free and open competition among railroads upon the subject of the rates for the transportation of persons and property.

The arguments which have been addressed to us against the inclusion of all contracts in restraint of trade, as provided for by the language of the act, have been based upon the alleged presumption that Congress, notwithstanding the language of the act, could not have intended to embrace all contracts, but only such contracts as were in unreasonable restraint of trade. Under these circumstances we are, therefore, asked to hold that the act of Congress excepts contracts which are not in unreasonable restraint of trade, and which only keep rates up to a reasonable price, notwithstanding the language of the act makes no such exception. In other words, we are asked to read into the act by way of judicial legislation an exception that is not placed there by the lawmaking branch of the Government, and this is to be done upon the theory that the impolicy of such legislation is so clear that it cannot be supposed Congress intended the natural import of the language it used. This we cannot and ought not to do. That impolicy is not so clear, nor are the reasons for the exception so potent as to permit us to interpolate an exception into the language of

the act, and to thus materially alter its meaning and effect. It may be that the policy evidenced by the passage of the act itself will, if carried out, result in disaster to the roads and in a failure to secure the advantages sought from such legislation. Whether that will be the result or not we do not know and cannot predict. These considerations are, however, not for us. If the act ought to read as contended for by defendants, Congress is the body to amend it and not this court, by a process of judicial legislation wholly unjustifiable. Large numbers do not agree that the view taken by defendants is sound or true in substance, and Congress may and very probably did share in that belief in passing the act. The public policy of the Government is to be found in its statutes, and when they have not directly spoken, then in the decisions of the courts and the constant practice of the Government officials; but when the lawmaking power speaks upon a particular subject, over which it has constitutional power to legislate, public policy in such a case is what the statute enacts. If the law prohibit any contract or combination in restraint of trade or commerce, a contract or combination made in violation of such law is void, whatever may have been theretofore decided by the courts to have been the public policy of the country on that subject.

The conclusion which we have drawn from the examination above made into the question before us is that the Anti-Trust Act applies to railroads, and that it renders illegal all agreements which are in restraint of trade or commerce as we have above defined that expression, and the question then arises whether the agreement before us is of that nature.

Although the case is heard on bill and answer, thus making it necessary to assume the truth of the allegations in the answer which are well pleaded, yet the legal effect of the agreement itself cannot be altered by the answer, nor can its violation of law be made valid by allegations of good intention or of desire to simply maintain reasonable rates; nor can the plaintiffs' allegations as to the intent with which the agreement was entered into be regarded, as such

intent is denied on the part of the defendants; and if the intent alleged in the bill were a necessary fact to be proved in order to maintain the suit, the bill would have to be dismissed. In the view we have taken of the question, the intent alleged by the Government is not necessary to be proved. The question is one of law in regard to the meaning and effect of the agreement itself, namely: Does the agreement restrain trade or commerce in any way so as to be a violation of the act? We have no doubt that it does. The agreement on its face recites that it is entered into "for the purpose of mutual protection by establishing and maintaining reasonable rates, rules and regulations on all freight traffic, both through and local." To that end the association is formed and a body created which is to adopt rates, which, when agreed to, are to be governing rates for all the companies, and a violation of which subjects the defaulting company to the payment of a penalty, and although the parties have a right to withdraw from the agreement on giving thirty days' notice of a desire so to do, yet while in force and assuming it to be lived up to, there can be no doubt that its direct, immediate and necessary effect is to put a restraint upon trade or commerce as described in the act.

For these reasons the suit of the Government can be maintained without proof of the allegation that the agreement was entered into for the purpose of restraining trade or commerce or for maintaining rates above what was reasonable. The necessary effect of the agreement is to restrain trade or commerce, no matter what the intent was on the part of those who signed it.

One or two subsidiary questions remain to be decided.

It is said that to grant the injunction prayed for in this case is to give the statute a retroactive effect; that the contract at the time it was entered into was not prohibited or declared illegal by the statute, as it had not then been passed; and to now enjoin the doing of an act which was legal at the time it was done would be improper. We give to the law no retroactive effect. The agreement in question is a continu-

ing one. The parties to it adopt certain machinery, and agree to certain methods for the purpose of establishing and maintaining in the future reasonable rates for transportation. Assuming such action to have been legal at the time the agreement was first entered into, the continuation of the agreement, after it has been declared to be illegal, becomes a violation of the act. The statute prohibits the continuing or entering into such an agreement for the future, and if the agreement be continued it then becomes a violation of the act. There is nothing of an *ex post facto* character about the act. The civil remedy by injunction and the liability to punishment under the criminal provisions of the act are entirely distinct, and there can be no question of any act being regarded as a violation of the statute which occurred before it was passed. After its passage, if the law be violated, the parties violating it may render themselves liable to be punished criminally; but not otherwise.

It is also argued that the United States have no standing in court to maintain this bill; that they have no pecuniary interest in the result of the litigation or in the question to be decided by the court. We think that the fourth section of the act invests the Government with full power and authority to bring such an action as this, and if the facts be proved, an injunction should issue. Congress having control of interstate commerce, has also the duty of protecting it, and it is entirely competent for that body to give the remedy by injunction as more efficient than any other civil remedy. The subject is fully and ably discussed in the case of *In re Debs* (158 U. S. 564). See also *Railway Co. v. Interstate Commerce Commission* (162 U. S. 184; *Id.* 197).

For the reasons given the decrees of the United States Circuit Court of Appeals and of the Circuit Court for the District of Kansas must be reversed, and the case remanded to the Circuit Court for further proceedings in conformity with this opinion.

II.

SUPREME COURT OF THE UNITED STATES.

No. 67.—OCTOBER TERM, 1896.

The United States, Appellant,	} Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.
<i>v/s.</i>	
The Trans-Missouri Freight Association.	

[March 22, 1897.]

MR. JUSTICE WHITE DISSENTING.

It is unnecessary to refer to the authorities showing that although a contract may in some measure restrain trade, it is not for that reason void or even voidable unless the restraint which it produces be unreasonable. The opinion of the court concedes this to be the settled doctrine.

The contract between the railway companies which the court holds to be void because it is found to violate the act of Congress of the 2d of July, 1890 (26 Stat. 209), substantially embodies only an agreement between the corporations by which a uniform classification of freight is obtained, by which the secret under-cutting of rates is sought to be avoided, and the rates as stated in the published rate sheets, and which, as a general rule, are required by law to be filed with the Interstate Commerce Commission, are secured against arbitrary and sudden changes. I content myself with giving this mere outline of the results of the contract, and do not stop to demonstrate that its provisions are reasonable, since the opinion of the court rests upon that hypothesis. I commence, then, with these two conceded propositions, one of law and the other of fact, first, that only such contracts as unreasonably restrain trade are violative of the general law, and, second, that the particular contract here under consideration is reasonable, and therefore not unlawful if the general principles of law are to be applied to it.

The theory upon which the contract is held to be illegal is that even though it be reasonable, and hence valid, under the general principles of law, it is yet void, because it conflicts with the act of Congress already referred to. Now, at the outset, it is necessary to understand the full import of this conclusion. As it is conceded that the contract does not un-

reasonably restrain trade, and that if it does not so unreasonably restrain, it is valid under the general law, the decision substantially, is that the act of Congress is a departure from the general principles of law, and by its terms destroys the right of individuals or corporations to enter into very many reasonable contracts. But this proposition, I submit, is tantamount to an assertion that the act of Congress is itself unreasonable. The difficulty of meeting, by reasoning, a premise of this nature is frankly conceded, for, of course, where the fundamental proposition upon which the whole contention rests is that the act of Congress is unreasonable, it would seem conducive to no useful purpose to invoke reason as applicable to and as controlling the construction of a statute which is admitted to be beyond the pale of reason. The question, then, is: Is the act of Congress relied on to be so interpreted as to give it a reasonable meaning, or it is to be construed as being unreasonable and as violative of the elementary principles of justice?

The argument upon which it is held that the act forbids those reasonable contracts which are universally admitted to be legal is thus stated in the opinion of the court, and I quote the exact language in which it is there expressed, lest in seeking to epitomize I may not accurately reproduce the thought which it conveys:

"Contracts in restraint of trade have been known and spoken of for hundreds of years both in England and in this country, and the term includes all kinds of those contracts which in fact restrain trade. Some of such contracts have been held void and unenforcible in the courts by reason of their restraint being unreasonable, while others have been held valid because they were not of that nature. A contract may be in restraint of trade and still be valid at common law. Although valid, it is nevertheless a contract in restraint of trade, and would be so described either at common law or elsewhere. By the simple use of the term contract in restraint of trade, all contracts of that nature, whether valid or otherwise, would be included, and not alone that kind of contract which was invalid and unenforcible as being in unreasonable restraint of trade.

When, therefore, the body of an act pronounces as illegal *every* contract or combination in restraint of trade or commerce among the several States, etc., the plain and ordinary meaning of such language is not limited to that kind of contract alone which is in unreasonable restraint of trade, but all contracts are included in such language, and no exception or limitation can be added without placing in the act that which has been omitted by Congress."

To state the proposition in the form in which it was earnestly pressed in the argument at bar, it is as follows: Congress has said every contract in restraint of trade is illegal. When the law says *every*, there is no power in the courts, if they correctly interpret, and apply the statute, to substitute the word *some* for the word *every*. If Congress had meant to forbid only restraints of trade which were unreasonable, it would have said so; instead of doing this it has said *every*, and this word of universality embraces both contracts which are reasonable and unreasonable.

Is the proposition which is thus announced by the court, and which was thus stated at bar, well founded? is the first question which arises for solution. I quote the title of the first section of the act which, it is asserted, if correctly interpreted, destroys the right to make just and reasonable contracts:

"An act to protect trade and commerce against unlawful restraints and monopolies.

"Every contract combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by both of said punishments in the discretion of the court."

Is it correct to say that at common law the words "restraint of trade" had a generic signification which embraced

all contracts which restrained the freedom of trade, whether reasonable or unreasonable, and, therefore, that all such contracts are within the meaning of the words "every contract in restraint of trade?" I think a brief consideration of the history and development of the law on the subject will not only establish the inaccuracy of this proposition, but also demonstrate that the words restraint of trade embrace only contracts which unreasonably restrain trade, and, therefore, that reasonable contracts, although they, in some measure, "restrain trade," are not within the meaning of the words. It is true that in the adjudged cases language may be found referring to contracts in restraint of trade which are valid because reasonable. But this mere form of expression, used not as a definition, does not maintain the contention that such contracts are embraced within the general terms every contract in restraint of trade. The rudiments of the doctrine of contracts in restraint of trade are found in the common law at a very early date. The first case on the subject is reported in Year Book 2 Henry V., fol. 5, p. 26, and is known as Dier's case. That was an action of damages upon a bond conditioned that the defendant should not practice his trade as a dyer at a particular place during a limited period, and it was held that the contract was illegal. The principle upon which this case was decided was not described as one forbidding contracts in restraint of trade, but was stated to be one by which contracts restricting the liberty of the subject were forbidden. The doctrine declared in that case was applied in subsequent cases in England prior to the case of *Mitchell v. Reynolds*, decided in 1711, and reported in 1 P. Wms. 181. There the distinction between general restraints and partial restraints was first definitely formulated, and it was held that a contract creating a partial restraint was valid and one creating a general restraint was not. The theory of partial and general restraints established by that case was followed in many decided cases in England, not, however, without the correctness of the difference between the two being in some instances denied and in others questioned, until the matter was set finally at rest by the House of Lords in *Nor-*

denfelt v. Nordenfelt Guns and Ammunition Company, reported in (1894) App. Cas. p. 535. In that case it was held that the distinction between partial and general restraint was an incorrect criterion, but that whether a contract was invalid because in restraint of trade must depend upon whether, on considering all the circumstances, the contract was found to be reasonable or unreasonable. If reasonable, it was not a contract in restraint of trade, and if unreasonable it was.

The decisions of the American courts substantially conform to both the development and ultimate results of the English cases. Whilst the rule of partial and general restraint has been either expressly or impliedly admitted, the exact scope of the distinction between the two has been the subject of discussion and varying adjudication. And although it is accurate to say that in the cases expressions may be found speaking of contracts as being in form, in restraint of trade and yet valid, it results from an analysis of all the American cases, as it does from the English, that these expressions in no way imply that contracts which were valid because they only partially restrained trade were yet considered as embraced within the definition of contracts in restraint of trade. On the contrary, the reason of the cases where contracts partially restraining trade were excepted and hence held to be valid, was because they were not contracts in restraint of trade in the legal meaning of those words. Referring to the modern and American rule on the subject, Beach, in his recent treatise on the Modern Law of Contracts, at section 1569, says:

"The tendency of modern thought and decisions has been no longer to uphold in its strictness the doctrine which formerly prevailed respecting agreements in restraint of trade. The severity with which such agreements were treated in the beginning has relaxed more and more by *exceptions and qualifications* and a gradual change has taken place, brought about by the growth of industrial activities and the enlargement of commercial facilities which tend to render such agreements less dangerous, because monopolies are less easy of accomplishment."

The fact that the exclusion of reasonable contracts from the doctrine of restraint of trade was predicated on the conclusion that such contracts were no longer considered as coming within the meaning of the words "restraint of trade," is nowhere more clearly and cogently stated than in the opinion of the Court of Appeals of the State of New York, in the case of *Matthews v. Associated Press of New York* (136 N.Y. 333). In considering the contention that a by-law of the defendant association which prohibited its members from receiving or publishing "the regular news dispatches of any other news association covering a like territory and organized for a like purpose" was void, because it tended to restrain trade and competition and to create a monopoly, the learned judge said (p. 340):

"We do not think the by-law improperly tends to restrain trade, assuming that the business of collecting and distributing news would come within the definition of a trade. The latest decisions of courts in this country and in England show a strong tendency to very greatly circumscribe and narrow the doctrine of avoiding contracts in restraint of trade. *The courts do not go to the length of saying that contracts which they now would say are in restraint of trade are, nevertheless, valid contracts, and to be enforced; they do, however, now hold many contracts not open to the objection that they are in restraint of trade which a few years back would have been avoided on that sole ground, both here and in England.* The cases in this court which are the latest manifestations of the turn in the tide are cited in the opinion in this case at general term, and are *Diamond Match Co. v. Roeber*, (106 N. Y. 73); *Hodge v. Neill*, (107 Id. 244); *Leslie v. Lorillard*, (110 Id. 519).

"So that when we agree that a by-law which is in restraint of trade is void, we are still brought back to the question, *what is a restraint of trade in the modern definition of that term?* The authority to make by-laws must also be limited by the scope and purpose of the association. I think this by-law is thus limited, and that *it is not in restraint of trade as the courts now interpret that phrase.*"

This lucid statement aptly sums up the process of reasoning by which partial and reasonable contracts came no longer to be considered as included in the words "contracts in restraint of trade," and points to the fallacy embodied in the proposition that contracts which were held not to be in restraint of trade were yet covered by the words in restraint of trade; that is, that although they were not such contracts, yet they continued so to be. After analyzing the provisions of the by-law, the opinion proceeds as follows (p. 341):

"Thus a by-law of the nature complained of would have a tendency to strengthen the association and to render it more capable of filling the duty it was incorporated to perform. A business partnership could provide that none of its members should attend to any business other than that of the partnership, and that each partner who came in must agree not to do any other business and must give up all such business as he had theretofore done. *Such an agreement would not be in restraint of trade*, although its direct effect might be to restrain to some extent the trade which had been done."

This adds cogency to the demonstration, and shows in the most conclusive manner that the words contracts in restraint of trade do not continue to define those contracts which are no longer covered by the legal meaning of the words.

This court has not only recognized and applied the distinction between partial and general restraints, but has also decided that the true test whether a contract be in restraint of trade is not whether in a measure it produces such effect, but whether under all the circumstances it is reasonable. (*Oregon Steam Navigation Co. v. Winsor*, 20 Wall. 64, 68; *Gibbs v. Baltimore Gas Co.*, 130 U. S. 396, 409.) As it is unnecessary here to enter into a detailed examination of the cases, I append in the margin a reference to decisions of some of the State courts and to several writers on the subject of contracts in restraint of trade, by whom the doctrine is reviewed and the authorities very fully referred to.*

**Diamond Match Co. v. Roeber*, 106 N. Y. 473; *Leslie v. Lorillard*, 110 N. Y. 519, 533; *Beal v. Chase*, 31 Mich. 490, 518; *National Benefit Co.*

It follows from the foregoing statement that at common law contracts which only partially restrain trade, to use the precise language of Maule, Justice, in *Rannie v. Irvine* (7 Man. & G. 977), were "*an exception grafted upon that rule,*" that is, the rule as to contracts in restraint of trade, "*and that the exception is in furtherance of the rule itself.*" I submit, also, manifestly that the further development of the doctrine by which it was decided that if a contract was reasonable it would not be held to be included within contracts in restraint of trade, although such contract might, in some measure, produce such an effect, was also an exception to the general rule as to the invalidity of contracts in restraint of trade. The theory, then, that the words restraint of trade define and embrace all such contracts without reference to whether they are reasonable, amounts substantially to saying that by the common law and the adjudged American cases, certain classes of contracts were carved out of and excepted from the general rule and yet were held to remain embraced within the general rule from which they were removed. But the obvious conflict which is shown by this contradictory result to which the contention leads rests not upon the mere form of statement but upon the reason of things. This will, I submit, be shown by a very brief analysis of the reasons by which partial restraints were held not to be embraced in contracts in restraint of trade, and by which ultimately all reasonable contracts were likewise decided not to be so embraced. That is to say, that the reasoning by which the exceptions were created conclusively shows the error of contending that the words contracts in restraint of trade continued to embrace those reasonable contracts which those words no longer described.

It is perhaps true that the principle by which contracts in restraint of the freedom of the subject or of trade were held

v. Hospital Co., 45 Minn. 272; *Ellerman v. Chicago Junction Railways etc. Co.*, 49 N. J. Eq. 215, 217; *Richards v. Am. Desk Co.*, 87 Wis. 503, 514; Note to 2 *Parsons on Contracts*, p. 748; Note to *Angier v. Webber*, 92 Am. Dec. 751 (1867); Note to *Mitchel v. Reynolds*, 1 *Smith's Leading Cases*, 705, and Supplemental Note, 9th Am. ed. 716 (1888); Review of Cases by A. M. Eaton in 4 *Harv. Law Review*, p. 129 (1890); *Patterson on Restraint of Trade* (1891).

to be illegal was first understood to embrace all contracts which in any degree accomplished these results. But as trade developed it came to be understood that if contracts which only partially restrained the freedom of the subject or of trade were embraced in the rule forbidding contracts in restraint of trade, both the freedom of contract and trade itself would be destroyed. Hence, from the reason of things, arose the distinction that where contracts operated only a partial restraint of the freedom of contract or of trade they were not in contemplation of law contracts in restraint of trade. And it was this conception also which, in its final aspect, led to the knowledge that reason was to be the criterion by which it was to be determined whether a contract which, in some measure, restrained the freedom of contract and of trade, was in reality, when considered in all its aspects, a contract of that character or one which was necessary to the freedom of contract and of trade. To define, then, the words "in restraint of trade," as embracing every contract which in any degree produced that effect would be violative of reason, because it would include all those contracts which are the very essence of trade, and would be equivalent to saying that there should be no trade, and therefore nothing to restrain. The dilemma which would necessarily arise from defining the words "contracts in restraint of trade," so as to destroy trade by rendering illegal the contracts upon which trade depends, and yet presupposing that trade would continue and should not be restrained, is shown by an argument advanced, and which has been compelled by the exigency of the premise upon which it is based.

Thus, after insisting that the word every is all-embracing, it is said from the necessity of things it will not be held to apply to covenants in restraint of trade, which are collateral to a sale of property, because not "supposed" to be within the letter or spirit of the statute. But how, I submit, can it be held that the words "*every* contract in restraint of trade" *embrace all* such contracts, and yet at the same time it be said that certain contracts of that nature are not included? The asserted exception not only destroys the rule which is relied on, but it

rests upon no foundation of reason. It must either result from the exclusion of particular classes of contracts, whether they be reasonable or not, or it must arise from the fact that the contracts referred to are merely collateral contracts. But many collateral contracts may contain provisions which make them unreasonable. The exception which is relied upon, therefore, as rendering possible the existence of trade to be restrained is either arbitrary or it is unreasonable.

But, admitting *arguendo* the correctness of the proposition by which it is sought to include every contract, however reasonable, within the inhibition of the law, the statute, considered as a whole, shows, I think, the error of the construction placed upon it. Its title is "An act to protect trade and commerce against unlawful restraints and monopolies." The word *unlawful* clearly distinguishes between contracts in restraint of trade which are lawful and those which are not. In other words, between those which are unreasonably in restraint of trade, and consequently invalid, and those which are reasonable and hence lawful. When, therefore, in the very title of the act the well-settled distinction between lawful and unlawful contracts is broadly marked, how can an interpretation be correct which holds that all contracts, whether lawful or not, are included in its provisions? While it is true that the title of an act cannot be used to destroy the plain import of the language found in its body, yet when a literal interpretation will work out wrong or injury, or where the words of the statute are ambiguous, the title may be resorted to as an instrument of construction. In *United States v. Palmer* (3 Wheat. 610), where general language found in the body of a criminal statute was given a narrow and restricted meaning, Mr. Chief Justice Marshall, in the course of the opinion, said (p. 631): "The title of an act cannot control its words, but may furnish some aid in showing what was in the mind of the Legislature. The title of this act is 'An act for the punishment of certain crimes against the United States.' It would seem that offenses against the United States, not offenses against the human race, were the crimes which the Legislature intended by this law to punish."

So, also, in *United States vs. Union Pacific R. R. Co.* (91 U. S. 72), where the construction of a statute was involved, it was held that the interpretation adopted was supported by the title, which disclosed the general purpose which Congress had in view in adopting the law under consideration. The same rule was announced in *Smythe v. Fiske* (23 Wall. 374, 380), and *Coosaw Mining Co. v. South Carolina* (144 U. S. 550), and cases there cited.

Pretermittin the consideration of the title, it cannot be denied that the words "restraint of trade" used in the act in question had long prior to the adoption of that act been construed as not embracing reasonable contracts. The well-settled rule is that where technical words are used in an act, and their meaning has previously been conclusively settled by long usage and judicial construction, the use of the words without an indication of an intention to give them a new significance is an adoption of the generally accepted meaning affixed to the words at the time when the act was passed. Particularly is this rule imperative where the statute in which the words are used creates a crime, as does the statute under consideration, and gives no specific definition of the crime created. Thus, in *United States v. Palmer* (*supra*), Mr. Chief Justice Marshall, referring to the term "robbery" as used in the statute, said (p. 630): "Of the meaning of the term robbery, as used in the statute, we think no doubt can be entertained. It must be understood in the sense in which it is recognized and defined at common law."

If these obvious rules of interpretation be applied, it seems to me they render it impossible to construe the words every restraint of trade used in the act in any other sense than as excluding reasonable contracts, as the fact that such contracts were not considered to be within the rule of contracts in restraint of trade, was thoroughly established both in England and in this country at the time the act was adopted. It is, I submit, not to be doubted that the interpretation of the words "every contract in restraint of trade," so as to embrace within its purview every contract, however reasonable, would cer-

tainly work an enormous injustice and operate to the undue restraint of the liberties of the citizen. But there is no canon of interpretation which requires that the letter be followed, when by so doing an unreasonable result is accomplished. On the contrary, the rule is the other way, and exacts that the spirit which vivifies and not the letter which killeth, is the proper guide by which to correctly interpret a statute. In *Smythe v. Fiske* (23 Wall. 374, 380) this court declared that "a thing may be within the letter of the statute and not within its meaning, and within its meaning, though not within its letter. The intention of the lawmaker is the law." In *Lau Ow Bew v. The United States* (144 U. S. 47) this court, speaking through Mr. Chief Justice Fuller, said (p. 59):

"Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion. (*Church of the Holy Trinity v. United States*, 143 U. S. 457; *Henderson v. Mayor of New York*, 92 U. S. 259; *United States v. Kirby*, 7 Wall. 482; *Oates v. National Bank*, 100 U. S. 239.)"

In all the cases there cited the literal language of the statutes was disregarded, in order to restrict its operation within reason. To those cases may also be added *United States v. Mooney* (116 U. S. 104), where it was contended that by the act of March 3, 1875, c. 137, the Circuit Courts were vested with jurisdiction concurrent with District Courts over certain suits. The plausibility of the argument, based upon the literal language of the statute, was conceded by the court, but the results which would follow from sustaining the construction contended for were pointed out by the court, and it was observed (p. 107): "A construction which involves such results was not clearly contemplated by Congress."

Indeed, it seems to me there can be no doubt that reasonable contracts cannot be embraced within the provisions of the statute if it be interpreted by the light of the supreme rule commanding that the intention of the law must be carried out, and it must be so construed as to afford the remedy and frustrate the wrong contemplated by its enactment.

The plain intention of the law was to protect the liberty of contract and the freedom of trade. Will this intention not be frustrated by a construction which, if it does not destroy, at least gravely impairs, both the liberty of the individual to contract and the freedom of trade? If the rule of reason no longer determines the right of the individual to contract or secures the validity of contracts upon which trade depends and results, what becomes of the liberty of the citizen or of the freedom of trade? Secured no longer by the law of reason, all these rights become subject, when questioned, to the mere caprice of judicial authority. Thus, a law in favor of freedom of contract, it seems to me, is so interpreted as to gravely impair that freedom. Progress and not reaction was the purpose of the act of Congress. The construction now given the act disregards the whole current of judicial authority and tests the right to contract by the conceptions of that right entertained at the time of the year books, instead of by the light of reason and the necessity of modern society. To do this violates, as I see it, the plainest conception of public policy, for, as said by Sir G. Jessel, Master of the Rolls, in *Printing Company v. Sampson* (L. R. 19 Eq. 465), "if there is one thing which more than another public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by courts of justice."

The remedy intended to be accomplished by the act of Congress was to shield against the danger of contract or combination by the few against the interest of the many and to the detriment of freedom. The construction now given, I think, strikes down the interest of the many to the advantage and benefit of the few. It has been held in a case involving a combination among workingmen that such combinations are embraced in the act of Congress in question, and this view was not doubted by this court. (*In re Debs*, 64 Fed. Rep. 724, 745-755; 158 U. S. 564.) The interpretation of the statute, therefore, which holds that reasonable agreements are within its

purview, makes it embrace every peaceable organization or combination of labor to benefit his condition either by obtaining an increase of wages or diminution of the hours of labor. Combinations among labor for this purpose were treated as illegal under the construction of the law which included reasonable contracts within the doctrine of the invalidity of contract or combinations in restraint of trade, and they were only held not to be embraced within that doctrine either by statutory exemption therefrom or by the progress which made reason the controlling factor on the subject. It follows that the construction which reads the rule of reason out of the statute embraces within its inhibition every contract or combination by which workingmen seek to peaceably better their condition. It is therefore, as I see it, absolutely true to say that the construction now adopted which works out such results not only frustrates the plain purpose intended to be accomplished by Congress, but also makes the statute tend to an end never contemplated, and against the accomplishment of which its provisions were enacted.

But conceding, for the sake of argument, that the words "every contract in restraint of trade," as used in the act of Congress in question, prohibits all such contracts, however reasonable they may be, and therefore that all that great body of contracts which are commonly entered into between individuals or corporations, and which promote and develop trade, and which have been heretofore considered as lawful, are no longer such; and conceding also that agreements entered into by associations of workingmen to peaceably better their condition either by obtaining an increase or preventing a decrease of wages, or by securing a reduction in the hours of labor, or for mutually protecting each other from unjust discharge, or for other reasonable purposes, have become unlawful, it remains to consider whether the provisions of the act of 1890 were intended to apply to agreements made between carriers for the purpose of classifying the freight to be by them carried, or preventing secret cutting of the published rates; in other words, whether the terms of the statute were

companies in the matter of classification, stable rates, etc. After the act of 1890 had been adopted in the Senate, it was amended in the House of Representatives so as to specifically include among the contracts declared lawful "contracts for the transportation of persons or property from one State or Territory into another." (Cong. Rec., vol. 21, part 5, pp. 4099, 4144.) On the return of the bill to the Senate the amendment was agreed to with the added provision that the contracts for transportation be prohibited, "should only be such as raise the rates of transportation above what is just and reasonable." (*Ib.* 4753.) The House refused to concur in the Senate amendment. A conference committee was appointed by both bodies, which recommended that the House of Representatives recede from its disagreement to the amendments of the Senate and agree to the same modified by the addition of the provision that "nothing in this act shall be deemed or held to impair the powers of the several States in respect to any of the matters in this act mentioned." In a statement accompanying the report, Mr. Stewart, for the conferees on the part of the House, said:

"A majority of the committee of conference on the part of the House on the disagreeing votes of the two houses on Senate bill submit the following statement:

"In the original bill two things were declared illegal, namely, contracts in restraint of interstate trade or commerce and the monopolization of such trade.

"Its only object was the control of trusts, so-called, so far as such combinations in their relation to interstate trade are within reach of Federal legislation.

"The House amendment extends the scope of the act to all agreements entered into for the purpose of preventing competition, either in the purchase or sale of commodities, or in the transportation of persons or property within the jurisdiction of Congress.

"It declares illegal any agreement for relief from the effects of competition in the two industries of transportation or merchandising, however excessive or destructive such competition may be.

"The amendment reported by the conference is the Senate amendment with the added proviso that the power of the States over the subjects embraced in the act shall not be impaired thereby.

"It strikes from the House amendment the clause relating to contracts for the purchase of merchandise, and modifies the transportation clause by making unlawful agreements which raise rates above what is just and reasonable." (Cong. Rec., vol. 21, part 6, p. 5950.)

The House rejected the report of the conference committee and adhered to its amendments. A new conference committee was appointed, and the recommendation of that committee that both houses recede was concurred in, and the bill as it originally passed the Senate was adopted. (Cong. Rec., vol. 21, part 9, p. 6212.)

It thus appears that the bill was originally introduced in the form in which it now appears; that this form was thought not to be sufficient to embrace railroad transportation, and that a determined effort was made by the proposed amendment to include such contracts, and that the effort was unsuccessful. The reports to Congress by the commission and by the conference committee being facts proper to be noticed in seeking to ascertain the intention of Congress (*Church of Holy Trinity v. United States*, 143 U. S. 457), it would seem to be manifest therefrom that there was no intention by the act to interfere with the control and regulation of railroads under the Interstate Commerce Act or with acts of the companies which had therefore been recognized as in conformity to and not in conflict with that act.

That there was and could have been no intention to repeal by the act of 1890 the earlier "act to regulate interstate commerce" is additionally evidenced by the fact that no reference is made in the later act to the prior one, and that no language is contained in the act of 1890 which could in any way be construed as abrogating any of the rights conferred or powers called into existence by the Interstate Commerce Act. Nowhere, contemporaneous with the act of 1890, is there anything

indicating that anyone supposed that the provisions of that act were intended to repeal the Interstate Commerce Act. The understanding of Congress in this respect is shown by the circumstance that the Interstate Commerce Act has been amended in material particulars and treated as existing since the adoption of the act of 1890; and this conception of the legislative department of the Government has also been that entertained by the executive and judicial departments, evidenced by the appointment of new members of the commission and by decisions of the courts enforcing various provisions of that act and treating it as still subsisting in its entirety. The two laws then co-existing, Is the agreement of the carriers to secure a uniform classification of freight and to prevent secret changes of the published rates, in other words, to secure just and fair dealings between each other, sanctioned by the act to regulate interstate commerce, and, therefore, not within the inhibition of the act of 1890?

The Interstate Commerce Act provided for the appointment of a commission to whom was to be confided the supervision of the execution of the law. Without going into detailed mention of the provisions of the statute, I adopt and quote the summary statement of the leading features of the original act contained in the first annual report made to Congress by the commission, as required by the act. It is as follows:

"All charges made for services by carriers subject to the act must be reasonable and just. Every unjust and unreasonable charge is prohibited and declared to be unlawful.

"The direct or indirect charging, demanding, collecting or receiving for any service rendered a greater or less compensation from any one or more persons than from any other for a like and contemporaneous service, is declared to be unjust discrimination and is prohibited.

"The giving of any undue or unreasonable preferences as between persons or localities, or kinds of traffic, or the subjecting anyone of them to undue or unreasonable prejudice or disadvantage, is declared to be unlawful.

"Reasonable, proper and equal facilities for the interchange of traffic between lines, and for the receiving, forwarding and delivering of passengers and property between connecting lines is required, and discrimination in rates and charges as between connecting lines is forbidden.

"It is made unlawful to charge or receive any greater compensation in the aggregate for the transportation of passengers or the like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance.

"Contracts, agreements or combinations for the pooling of freights of different and competing railroads, or for dividing between them the aggregate of net earnings of such railroads or any portion thereof, are declared to be unlawful.

"All carriers subject to the law are required to print their tariffs for the transportation of persons and property, and to keep them for public inspection at every depot or station on their roads. An advance in rates is not to be made until after ten days' public notice, but a reduction in rates may be made to take effect at once, the notice of the same being immediately and publicly given. The rates publicly notified are to be the maximum as well as the minimum charges which can be collected or received for the services respectively for which they purport to be established.

"Copies of all tariffs are required to be filed with the commission, which is also to be promptly notified of all changes that shall be made in the same. The joint tariffs of connecting roads are also required to be filed, and also copies of all contracts, agreements or arrangements between carriers in relation to traffic affected by the act.

"It is made unlawful for any carrier to enter into any combination, contract or agreement, expressed or implied, to prevent, by change of time schedules, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination."

These provisions substantially exist in the act as now in force, except that by an amendment made March 2, 1889, it was provided that rates should not be reduced by carriers except upon three days' public notice of an intention so to do.

This summary of the act, which omits reference to a number of its provisions relating to the power of the commission and the mode in which these powers are to be exercised, will suffice for an examination of the matter in hand.

Now, a consideration of the terms of the statute, I submit, makes it clear that the contract here sought to be avoided as illegal is either directly sanctioned or impliedly authorized thereby. That the act did not contemplate that the relations of the carrier should be confined to his own line and to business going over such line alone, is conclusively shown by the fact that the act specifically provides for joint and continuous lines; in other words, for agreements between several roads to compose a joint line. That these agreements are to arise from contract is also shown by the fact that the law provides for the filing of such contracts with the commission. And it was also contemplated that the agreements should cover joint rates, since it provides for the making of such joint tariffs and for their publication and filing with the commission. The making of a tariff of this character includes necessarily agreements for the classification of freight, as the freight classification is the essential element in the making up of a rate. That the interstate commerce rates, all of which are controlled by the provisions as to reasonableness, were not intended to fluctuate hourly and daily as competition might ebb and flow, results from the fact that the published rates could not either be increased or reduced, except after a specified time. It follows, then, that agreements as to reasonable rates and against their secret reduction conform exactly to the terms of the act. Indeed, the authority to make agreements on this subject not only results from the terms of the act just referred to, but from its mandatory provisions forbidding discrimination against or preference to persons and places. The argument that these provisions referred to joint lines alone and not to

competitive lines is without force; since joint rates necessarily relate to and are influenced by the rates on competitive lines. To illustrate, suppose three joint lines of railroads between Chicago and New York, each made up of many roads. How could a joint rate be agreed upon by the roads composing one of these continuous lines, without an ascertainment of the rate existing on the other continuous line? What contract could be made with safety for transportation over one of the lines without taking into account the rate of all the others? There certainly could be no prevention of unjust discrimination as to the persons and places within a given territory, unless the rates of all competing lines within the territory be considered and the sudden change of the published rates of all such lines be guarded against.

I do not further elaborate the reasons demonstrating that classification is essential to rate-making, and that a joint rate to be feasible must consider the competitive rates in the same territory, since these propositions are to me self-evident, and their correctness is substantiated by statements found in the reports of the Interstate Commerce Commission to Congress, of which reports judicial notice may be taken. (*Heath v. Wallace*, 138 U. S. 573, 584.)

I excerpt from some of these reports of the commission to Congress statements bearing on these subjects, as well as other statements indicating that agreements among carriers, competitive as well as connecting, for the purpose of securing a uniform classification and preventing of undercutting of rates, underbilling, etc., existed prior to the Interstate Commerce Act, were continued thereafter, and were deemed not to be forbidden by law, but, on the contrary, were considered as instruments tending to secure its successful evolution. While it is doubtless true that in a recent report the commission, as now constituted, has said that agreements between competitors to prevent the undercutting of rates may operate to cause carriers to disregard the lawful orders of the commission, but this fact does not change the legal inference to be deduced from the construction placed upon the law by those charged

with its administration in the period immediately following its adoption and which was then reported to Congress.

On the subject of relative rates, the commission, at page 39 of their first annual report, said: "Questions of rates on one line at one point cannot be considered by themselves exclusively; a change in them must affect rates in a considerable part of the country. . . . Just rates are always relative; the act itself provides for its being so when it forbids unjust discrimination as between localities." That is to say, if one continuous line made joint rates and fixed and published them, and the other then made a different rate, not only would the first joint rate be injurious to the interests of the railroads making it, during the period in which it could not be changed, but would also be against the interests of the public and of those who had contracted to ship, since it would create among shippers and the receivers that inequality which it was the express purpose of the act to prevent.

In the same report of the commission, at page 33, not only the expediency but the necessity of contractual relations between railroad companies is pointed out in the following language:

"To make railroads of the greatest possible service to the country, contract relations would be essential, because there would need to be joint tariffs, joint running arrangements, an interchange of cars and a giving of credit to a large extent, some of which were obviously beyond the reach of compulsory legislation, and even if they were not, could be best settled and all the incidents and qualifications fixed by the voluntary action of the parties in control of the roads respectively."

Also at page 35, after referring to the fact that the former railroad associations had been continued in existence since the enactment of the Interstate Commerce Law, though pooling had been prohibited, among other objects, for the "making of regulations for uninterrupted and harmonious railroad communication and exchange of traffic within the territories embraced by their workings," the commission observed that "some regulations in addition to those made by the law are almost if not altogether indispensable."

On the same page the fact is emphasized that classification had not been taken, by the act, out of the hands of the carriers, and it was observed that classification was best made by the joint action of the railroads themselves. In its second annual report the commission, in commenting upon the evils arising from the want of friendly business relations between railroads and the injury that a short road might cause by simply abstaining from extending accommodation that could not be lawfully forced from it, said (p. 28):

"The public has an interest in being protected against the probable exercise of any such power. But its interest goes further than this; it goes to the establishment of such relations among the managers of roads as will lead to the extension of their traffic arrangements with mutual responsibility, just as far as may be possible, so that the public may have in the service performed all the benefits and conveniences that might be expected to follow from general federation. There is nothing in the existence of such arrangements which is at all inconsistent with earnest competition. They are of general convenience to the carriers, as well as to the public, and their voluntary extension may be looked for until in the strife between the roads the limits of competition are passed and warfare is entered upon. But in order to form them great mutual concessions are often indispensable, and such concessions are likely to be made when relations are friendly, but are not to be looked for when hostile relations have been inaugurated."

At page 29 of the report existence of traffic arrangements between railroads is called to the attention of Congress in the following language:

"While the commission is not at this time prepared to recommend general legislation toward the establishment or promotion of relations between the carriers that shall better subserve the public interest than those which are now common, it must nevertheless look forward to the possibility of something of that nature becoming at some time imperative, unless a great improvement in the existing conditions of things is voluntarily inaugurated."

So, also, the existence of traffic associations, between competitive roads, for purposes recognized by the act as lawful, and their favorably tendency seems to be conceded in the fourth annual report of the commissioners, where, at page 29, it is said:

"If the regulations which are established by the railroad associations were uniformly, or even generally, observed by their members, respectively, there would be little difficulty in enforcing a rule of reasonable rates, for the competition between the roads which even then would exist would be such as would prevent the establishment of rates which are altogether unreasonable, and the public would not be likely to complain if they were satisfied that the rate sheets were observed."

The character of associations such as that under consideration is alluded to at page 26 of the same report, where, in discussing the subject of how best to secure a unity of railroad interests, it was observed "without legislation to favor it little can be done beyond the formation of consulting and advisory associations, and the work of these is not only necessarily defective, but it is also limited to a circumscribed territory."

The significance of the statement that to obtain uniformity of classification, a result most desirable for the best interests of the public, agreements between the railroads themselves were essential, is apparent from the fact, frequently declared by the commission in its reports, that uniformity of classification is one of the prerequisites of uniformity of rates. (1 Ann. Rep. 30, 35; 2 Ann. Rep. 40; 3 Ann. Rep. 51, 52; 4 Ann. Rep. 32). The very great importance of uniform and stable rates has also frequently been reiterated in the reports of the commission. Thus, at page 6 of the first annual report, in reviewing the causes which led to the adoption of the Interstate Commerce Act, it is said:

"Permanence of rates was also seen to be of very high importance to every man engaged in business enterprises, since without it business contracts were lottery ventures. It was also perceived that the absolute sum of the money charges exacted for transportation, if not clearly beyond the bounds of reason, was of inferior importance in comparison with the ob-

taining of rates that should be open, equal, relatively just as between places and as steady as in the nature of things was practicable."

That unstable rates between competing carriers lead to injurious discrimination, one of the evils sought to be remedied by the act, was mentioned in the same report at pages 36 and 37, in connection with a discussion of the subject of reasonable charges, in the following language:

"Among the reasons most frequently operating to cause complaints of rates may be mentioned: the want of steadiness in rates. . . . More often, perhaps, growing out of disagreements between competing companies which, when they become serious, may result in wars of rates between them. Wars of rates, when mutual injury is the chief purpose in view, as is sometimes the case, are not only mischievous in their effects upon the parties to them, and upon the business community whose calculations and plans must for a time be disturbed, but they have a permanently injurious influence upon the railroad service because of their effect upon the public mind."

The evil effects of shifting rates was also treated of at page 22 of the second annual report, where the commission inserted a letter received from a business man of Kansas City, not connected with railroads, who said:

"The frequent and violent changes in railway rates which have taken place during the past few years, and which seem likely to be unabated, seems to me to call for new legislation in the way of amendment of the Interstate Commerce Bill. These changes are ruinous to all business men, as well as the railways, and are the cause of great discontent among shippers everywhere, and especially to the farmers. What is needed is a fixed permanent rate, which shall be reasonable, and which can be counted upon by anyone engaging in business."

So, also, in the fourth annual report it was observed that shifting, unstable rates, by competing roads, was contrary to the purpose of the Interstate Commerce Act, and hampered the operations of the commission. It was said at page 21:

"In former reports the commission has referred to the un-

doubted fact that competition for business between railroad companies is often pushed to ruinous extremes, and the most serious difficulty in the way of securing obedience to the law may be traced to this fact. When competition degenerates to rate wars they are as unsettling to the business of the country as they are mischievous to the carriers, and the spirit of existing law is against them."

In addition to the text of the law heretofore commented on, the section which forbids pooling adds cogency to the construction that the law could not have been intended to forbid contracts between carriers for the purpose of preventing the doing of those things which the law forbade. For as I have seen, it cannot be denied that at the time of the passage of the act there existed associations and contracts between carriers for other purposes than the pooling of their earnings. Whilst the exact scope of these contracts is not shown, the fact that their existence was considered by Congress results from the face of the act, since it requires that agreements and contracts between carriers shall be filed with the commission. Moreover, the earlier reports of the commission, as I have shown, refer to such traffic agreements, and state that after the passage of the act they continued to exist as they had existed before, eliminating only the pooling feature.

In view of these facts, when the act *expressly forbids contracts and combinations between railroads for pooling, and makes no mention of other contracts*, it is clear that the continued existence of such contracts was contemplated, and they are not intended to be forbidden by the act. The elementary rule of *expressio unius* entirely justifies this implication.

And it is, I submit, no answer to this reasoning to say that the record does not show the terms of these contracts, since judicial notice may be taken of the reports made by the commission to Congress, from which reports the nature of the contracts is sufficiently pointed out to authorize the conclusion to illustrate that they were of the general character of the one here assailed.

Whilst the excerpts from the reports of the commission

which were heretofore made serve to elucidate the text of the act, they also, I submit, constitute a contemporaneous construction of the provisions of the act made by the officers charged with its administration, which is entitled to very great weight. (*Brown v. United States*, 113 U. S. 571, and cases there cited.)

The rule sustained by these authorities receives additional sanction here, from the fact that the construction at the time made by the commission was reported to Congress, and the act was subsequently amended by that body without any repudiation of such construction.

It is, I submit, therefore, not to be denied that the agreement between the carriers, the validity of which is here drawn in question, seeking to secure uniform classification and to prevent the undercutting of the published rates, even though such agreements be made with competing as well as joint lines, is in accord with the plain text of the Interstate Commerce Act, and is in harmony with the views of the purposes of that law contemporaneously expressed to Congress by the body immediately charged with its administration, and tacitly approved by Congress.

But, departing from a consideration of the mere text and looking at the Interstate Commerce Act from a broader aspect, in order to discover the intention of the lawmaker and to discern the evils which it was intended to suppress and the remedies which it was proposed to afford by its enactment, it seems to me very clear that the contract in question is in accord with the act and should not be avoided.

It cannot be questioned that the Interstate Commerce Act was intended by Congress to inaugurate a new policy for the purpose of reasonably controlling interstate commerce rates and the dealings of carriers with reference to such rates. Two systems were necessarily presented; the one a prohibition against the exaction of all unreasonable rates and subject to this restriction, allowing the hourly and daily play of untrammelled competition, resulting in inequality and discrimination; the other imposing a like duty as to reasonable rates, and whilst allowing competition subject to this limitation, preventing the


injurious consequences arising from a constant and daily change of rates between connecting or competing lines, thus avoiding discrimination and preference as to persons and places.

The second of these systems is, I submit, plainly the one embodied in the Interstate Commerce Act. At the outset reasonable rates are exacted, and the power to strike down rates which are unreasonable is provided. In the subsequent provisions discrimination against persons and against places to arise from daily fluctuation in rates is guarded against by requiring publication of rates and forbidding changes of the published rates, whether by way of increase or reduction, during a limited time. To hold, then, the contract under consideration to be invalid when it simply provides for uniform classification, and seeks to prevent secret or sudden changes in the published rates, would be to avoid a contract covered by the law and embodied in its policy. It cannot, I think, be correctly said that whilst the avowed purpose of the contract in question embraced only the foregoing objects, its ulterior intent was to bring about results in conflict with the Interstate Commerce Law. The answers to the bill of complaint specially denied the allegations as to the improper motives of the parties to the contract, and also expressly averred their lawful and innocent intention. As the case was heard upon bill and answer, improper motives cannot therefore be imputed. Indeed, the opinion of the court sustains this view, since it eliminates all consideration of improper motives and holds that the validity of the contract must depend upon its face, and deduces as a legal conclusion from this premise that the contract is invalid, because even reasonable contracts are embraced within the purview of the act of 1890. To my mind, the judicial declaration that carriers cannot agree among themselves for the purpose of aiding in the enforcement of the provisions of the Interstate Commerce Law will strike a blow at the beneficial results of that act, and will have a direct tendency to produce the preferences and discriminations which it was one of the main objects of the act to frustrate. The great complexity of

the subject, the numerous interests concerned in it, the vast area over which it operates, present difficulties enough without, it seems to me, it being advisable to add to them by holding that a contract which is supported by the text of the law is invalid, because, although it is reasonable and just, it must be considered as in restraint of trade.

Nor do I think that the danger of these evil consequences is avoided by the statement that if the contract be annulled, these dangers will not arise, because experience shows that contracts such as that here in question when entered into by railroads, are never observed and therefore it is just as though the contract did not exist. How, may I ask, can judicial notice be taken of this fact, when it is said that judicial notice cannot be taken of the fact that there are such contracts? How, moreover, may I ask, can it be said on one branch of the case that the contract, although reasonable, must be avoided, because it is a contract in restraint of trade, and then on the other branch declare that contracts of that character never do restrain trade because they are never carried out between the parties who enter into them?

There is another contention which, I submit, is also unsound, that is the suggestion that it is impossible to say that there can be such a thing as a reasonable contract between railroads seeking to avoid sudden or secret changes in reasonable rates, because the question of railroad rates is so complex and is involved in so much difficulty that to say that a rate is reasonable is equivalent to saying that it must be fixed by the railroads themselves, as no mind outside of the officials of the particular roads can determine whether a rate is reasonable or not. But this proposition absolutely conflicts with the methods of dealing with railroad rates adopted in England and expressly put in force by Congress in the Interstate Commerce Act and by many of the States of the Union. For years the rule in England was reasonable rates enforced by judicial power, and subsequently by enactment securing such reasonable rates by administrative authority. The Interstate Commerce Act especially provides for reasonable rates, and vests



primarily in the commission and then in the courts, the power to enforce the provision and like machinery is provided in many of the States. Will it be said that Congress and other legislative bodies have provided for reasonable rates and created the machinery to enforce them, when whether rates are reasonable or not is impossible of ascertainment? If this proposition be correct, what, may I ask, becomes of the judgment of this court in *Cin. N. O. & T. P. Ry. v. Interstate Commerce Commission* (162 U. S. 184), where it is held that the order of the commission finding certain rates charged by a railroad to be unreasonable was correct?

In conclusion, I notice briefly the proposition that though it be admitted that contracts, when made by individuals or private corporations, when reasonable, will not be considered as in restraint of trade, yet such is not the case as to public corporations, because any contract made by them in any measure in restraint of trade, even when reasonable, is presumptively injurious to the public interests, and therefore invalid. The fallacy in this proposition consists in overlooking the distinction between acts of a public corporation which are *ultra vires* and those which are not. If the contract of such a corporation which is assailed be *ultra vires*, of course the question of reasonableness becomes irrelevant, since the charter is the reason of the being of the corporation. The doctrine is predicated on the following expressions taken from the opinion of the court expressed by Mr. Chief Justice Fuller in *Gibbs v. Baltimore Gas Co.* (*supra*), at p. 408:

"That in the instance of business of such a character that it presumably cannot be restrained to any extent whatever without prejudice to the public interests, courts decline to enforce or sustain contracts imposing such restraint, however partial, because in contravention of public policy. This subject is much considered, and the authorities cited in *West Virginia Transportation Co. v. Ohio River Pipe Line Co.* (22 West Va. 600); *Chicago, &c., Gas Co. v. People's Gas Co.* (121 Illinois, 530); *Western Union Telegraph Co. v. American Union Telegraph Co.* (65 Georgia, 160)."

But, manifestly, this language must be construed with reference to the facts of the case in which it was used. What the facts were in that case is shown by the statement in the opinion (p. 406) that the contract there considered "was an agreement for the abandonment by one of the companies of the discharge of its duties to the public." It is also to be remembered that it was this character of contract, that is, one which was *ultra vires*, which was held to be illegal in the West Virginia, Illinois and Georgia cases, which were cited in the Gibbs case in support of the excerpt just quoted. That the language in the Gibbs case referred to conditions of fact like that there passed upon, that is, contracts *ultra vires*, is shown by the subsequent case of Chicago, &c., Railway Co. v. Pullman Car Co. (139 U. S. 79), where a contract of the railway company was assailed as in restraint of trade, and the court held that although by contract the company had restrained itself for a long period of years from using other than certain drawing-room and sleeping cars, the contract was yet a valid and proper contract. Manifestly, this decision is utterly irreconcilable with the view that in the case of a railroad company, every restraint imposed by contract upon its freedom of action is necessarily injurious to the public interests, and hence invalid. Indeed, the proposition that any restraint of its conduct which a railroad may create by contract is invalid, because such road is a public corporation, is demonstrated to be erroneous by the Interstate Commerce Act, which, in the provisions heretofore referred to, not only expressly authorizes, but in some instances commands, agreements from which restraint of the action of the corporation necessarily arises.

I am authorized to say that Mr. Justice Field, Mr. Justice Gray and Mr. Justice Shiras concur in this dissent.

The Rate-Making Power of the Interstate Commerce Commission.

SUPREME COURT OF THE UNITED STATES.

No. 733.—OCTOBER TERM, 1896.

The Interstate Commerce Commission,	} On a certificate from the United States Circuit Court of Appeals for the Sixth Circuit.
Appellant,	
<i>vs.</i>	
The Cincinnati New Orleans and Texas Pacific Railway Company et al.	

[May 24, 1897.]

This case is before us on a question certified by the Court of Appeals for the Sixth Circuit. On May 29, 1894, the Interstate Commerce Commission entered an order, of which the following is a copy:

“At a general session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 29th day of May, A. D. 1894.

“Present: Hon. William R. Morrison, chairman; Hon. Wheelock G. Veazey, Hon. Martin A. Knapp, Hon. Judson C. Clements, and Hon. James D. Yeomans, commissioners.

“The Freight Bureau of the Cincinnati Chamber of Commerce v. The Cincinnati New Orleans & Texas Pacific Railway Company, Lessee of the Cincinnati Southern Railway; The Louisville and Nashville Railroad Company; The East Tennessee Virginia and Georgia Railway Company; The Western and Atlantic Railroad Company; The Alabama Great Southern Railroad Company; The Atlanta and West Point Railroad Company; The Central Railroad and Banking Company of Georgia; The Georgia Railroad Company; The Georgia Pacific Railway Company; The Norfolk and Western Rail-

road Company; The Port Royal and Augusta Railway Company; The Richmond and Danville Railroad Company; The Savannah Florida and Western Railway Company; The Seaboard and Roanoke Railroad Company; The South Carolina Railway Company; The Western Railway of Alabama; The Wilmington and Weldon Railroad Company; The Wilmington Columbia and Augusta Railroad Company; The Baltimore Chesapeake and Richmond Steamboat Company; The Clyde Steamship Company; The Merchants' and Miners' Transportation Company; The Ocean Steamship Company; the Old Dominion Steamship Company.

"The Chicago Freight Bureau v. The Louisville New Albany and Chicago Railway Company; The Chicago and Alton Railroad Company; The Chicago and Eastern Illinois Railroad Company; The Cincinnati Hamilton and Dayton Railroad Company; The Cleveland Cincinnati Chicago and St. Louis Railway Company; The Evansville and Terre Haute Railroad Company; The Illinois Central Railroad Company; The Louisville Evansville and St. Louis Consolidated Railroad Company; The Peoria Decatur and Evansville Railway Company; The Pittsburg, Cincinnati Chicago and St. Louis Railway Company; The Terre Haute and Indianapolis Railroad Company; The Wabash Railroad Company; The Cincinnati New Orleans and Texas Pacific Railway Company, Lessee of the Cincinnati Southern Railway; The Louisville and Nashville Railroad Company; The East Tennessee Virginia and Georgia Railway Company; The Western and Atlantic Railroad Company; The Alabama Great Southern Railroad Company; The Atlanta and West Point Railroad Company; The Central Railroad and Banking Company of Georgia; The Georgia Railroad Company; The Georgia Pacific Railway Company; The Norfolk and Western Railroad Company; The Port Royal and Augusta Railway Company; The Richmond and Danville Railroad Company; The Savannah Florida and Western Railway Company; The Seaboard and Roanoke Railroad Company; The South Carolina Railway Company; The Western Railway of Alabama; The Wilmington and Weldon

Railroad Company; The Wilmington, Columbia and Augusta Railroad Company; The Baltimore, Chesapeake and Richmond Steamboat Company; The Clyde Steamship Company; The Merchants' and Miners' Transportation Company; The Ocean Steamship Company; The Old Dominion Steamship Company.

"These cases being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved herein having been had and the commission having on the date hereof made and filed a report and opinion containing its finding of fact and conclusions thereon, which said report and opinion is hereby referred to and made a part of this order, and the commission having, as appears by said report and opinion, found and decided, among other things, that the rates complained of and set forth in said report and opinion as in force over roads operated by carriers defendant herein and forming routes or connecting lines leading southerly from Chicago or Cincinnati to Knoxville, Tenn.; Chattanooga, Tenn.; Rome, Ga.; Atlanta, Ga.; Meridian, Miss.; Birmingham, Ala.; Anniston, Ala., and Selma, Ala., are unreasonable and unjust and in violation of the provisions of the act to regulate commerce:

"It is ordered and adjudged that the above-named defendants and each of them, engaged or participating in the transportation of freight articles enumerated in the Southern Railway and Steamship Association classification as articles of the first, second, third, fourth, fifth or sixth class, do from and after the tenth day of July, 1894, wholly cease and desist and thenceforth abstain from charging, demanding, collecting, or receiving any greater aggregate rate or compensation per hundred pounds for the transportation of freight in any such class from Cincinnati, in the State of Ohio, or from Chicago, in the State of Illinois, to Knoxville, Tenn.; Chattanooga, Tenn.; Rome, Ga.; Atlanta, Ga.; Meridian, Miss.; Birmingham, Ala.; Anniston, Ala., or Selma, Ala., than is below specified in cents per hundred pounds under said numbered classes respectively and set opposite to said points of destination—that is to say:

On shipments of freight from Cincinnati.

To	Class 1, rates per 100 lbs.	Class 2, rates per 100 lbs.	Class 3, rates per 100 lbs.	Class 4, rates per 100 lbs.	Class 5, rates per 100 lbs.	Class 6, rates per 100 lbs.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Knoxville.....	53	45	37	27	22	20
Chattanooga.....	60	54	40	30	24	22
Rome.....	75	64	54	44	34	24
Atlanta.....	86	73	60	45	35	27
Meridian.....	114	98	80	62	49	38
Birmingham.....	87	74	60	46	36	28
Anniston.....	86	73	60	45	35	27
Selma.....	108	92	78	60	48	36

On shipments of freight from Chicago.

To	Class 1, rates per 100 lbs.	Class 2, rates per 100 lbs.	Class 3, rates per 100 lbs.	Class 4, rates per 100 lbs.	Class 5, rates per 100 lbs.	Class 6, rates per 100 lbs.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Knoxville.....	93	79	62	44	37	32
Chattanooga.....	100	88	65	47	39	34
Rome.....	114	97	79	61	49	38
Atlanta.....	126	107	85	62	50	39
Meridian.....	114	98	82	60	47	38
Birmingham.....	111	95	72	52	44	34
Anniston.....	126	107	85	62	50	39
Selma.....	128	112	89	66	53	38

"And said defendants and each of them are also hereby notified and required to further readjust their tariffs of rates and charges so that from and after said 10th day of July, 1894, rates for the transportation of freight articles from Cincinnati and Chicago to Southern points other than those hereinabove specified shall be in due and proper relation to rates put into effect by said defendants in compliance with the provisions of this order.

"And it is further ordered, that a notice embodying this order be forthwith sent to each of the defendant corporations, together with a copy of the report and opinion of the commission herein, in conformity with the provisions of the fifteenth section of the act to regulate commerce."

The railroad companies having failed to comply with the order, the Interstate Commerce Commission instituted this

suit in the Circuit Court of the United States for the Southern District of Ohio to compel obedience thereto. The court upon a hearing entered a decree dismissing the bill (76 Fed. Rep. 183), from which decree an appeal was taken to the Court of Appeals, and that court, reciting the order, submits to us the following question: "Had the Interstate Commerce Commission jurisdictional power to make the order hereinbefore set forth—all proceedings preceding said order being due and regular, so far as procedure is concerned?"

Mr. Justice Brewer delivered the opinion of the court:

A similar question was before us at the last term in *The Cincinnati New Orleans & Texas Pacific Railway Company v. Interstate Commerce Commission* (162 U. S. 184), and in the opinion, on pages 196 and 197, we said:

"Whether Congress intended to confer upon the Interstate Commerce Commission the power to itself fix rates, was mooted in the courts below, and is discussed in the briefs of counsel.

"We do not find any provision of the act that expressly, or by necessary implication, confers such a power.

"It is argued on behalf of the commission that the power to pass upon the reasonableness of existing rates implies a right to prescribe rates. This is not necessarily so. The reasonableness of the rate, in a given case, depends on the facts, and the function of the commission is to consider these facts and give them their proper weight. If the commission, instead of withholding judgment in such a matter until an issue shall be made and the facts found, itself fixes a rate, that rate is prejudged by the commission to be reasonable.

"We prefer to adopt the view expressed by the late Justice Jackson, when circuit judge, in the case of the *Interstate Commerce Commission v. Baltimore & Ohio Railroad Co.* (43 Fed. Rep. 37), and whose judgment was affirmed by this court (145 U. S. 263):

"Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or dis-

advantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at the common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound, and adopted in other trades and pursuits.' "

The views thus expressed have been vigorously and earnestly challenged in this and in other cases argued at the present term. In view of its importance, and the full arguments that have been presented, we have deemed it our duty to re-examine the question in its entirety, and to determine what powers Congress has given to this commission in respect to the matter of rates. The importance of the question cannot be overestimated. Billions of dollars are invested in railroad properties. Millions of passengers, as well as millions of tons of freight, are moved each year by the railroad companies, and this transportation is carried on by a multitude of corporations working in different parts of the country and subjected to varying and diverse conditions.

Before the passage of the act it was generally believed that there were great abuses in railroad management and railroad transportation, and the grave question which Congress had to consider was how those abuses should be corrected and what control should be taken of the business of such corporations. The present inquiry is limited to the question as to what it determined should be done with reference to the matter of rates. There were three obvious and dissimilar courses open for consideration. Congress might itself prescribe the rates; or it might commit to some subordinate tribunal this duty; or it might leave with the companies the right to fix rates, subject to regulations and restrictions, as well as to that rule which is as old as the existence of common carriers, to wit, that rates must be reasonable. There is nothing in the act fixing rates. Congress did not attempt to exercise that power, and if we examine the legislative and public history

of the day it is apparent that there was no serious thought of doing so.

The question debated is whether it vested in the commission the power and the duty to fix rates; and the fact that this is a debatable question, and has been most strenuously and earnestly debated, is very persuasive that it did not. The grant of such a power is never to be implied. The power itself is so vast and comprehensive, so largely affecting the rights of carrier and shipper, as well as indirectly all commercial transactions, the language by which the power is given had been so often used and was so familiar to the legislative mind and is capable of such definite and exact statement, that no just rule of construction would tolerate a grant of such power by mere implication. Administrative control over railroads through boards or commissions was no new thing. It had been resorted to in England and in many of the States of this Union. In England, while control had been given in respect to discrimination and undue preferences, no power had been given to prescribe a tariff of rates. In this country the practice had been varying. It will be interesting to notice the provisions in the legislation of the different States. We quote the exact language, following some of the quotations with citations of cases in which the statute has been construed:

Alabama (Code 1886, p. 295, sec. 1130): "Exercise a watchful and careful supervision over all tariffs and their operations, and revise the same, from time to time, as justice to the public and the railroads may require, and increase or reduce any of the rates, as experience and business operations may show to be just."

California. In the constitution, going into effect January 1, 1880, article 12, sec. 22: "Said commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make."

Florida (Session Laws, 1887, page 119, sec. 5): "Make and fix reasonable and just rates of freights and passenger

tariffs, to be observed by all railroad companies doing business in this State, on the railroads thereof." (Railroad Commissioners v. P. & A. R. R., 24 Fla. 417.)

Georgia (Code, 1882, page 159, sec. 719): "Make reasonable and just rates of freight and passenger tariffs, to be observed by all railroad companies doing business in this State on the railroads thereof." (Railroad v. Smith, 70 Ga., 694.)

Illinois (Statutes 1878 (Underwood's Edition) page 114, sec. 93): "To make, for each of the railroad corporations doing business in this State, as soon as practicable, a schedule of reasonable maximum rates of charges for the transportation of passengers and freights on cars on each of said railroads."

Iowa (Laws 1888, page 43): "Make for each of the railroad corporations, doing business in this State, as soon as practicable, a schedule of reasonable maximum rates of charges for the transportation of freight and cars on each of said railroads." (B. C. & N. Ry. Co. v. Dey, 82 Iowa, 312.)

Minnesota (Laws 1887, chap. 10, page 55): "In case the commission shall at any time find that any part of the tariffs of rates, fares, charges or classifications so filed and published as hereinbefore provided, are in any respect unequal or unreasonable, it shall have the power, and is hereby authorized and directed to compel any common carrier to change the same and adopt such rate, fare, charge or classification as said commission shall declare to be equal and reasonable." (State v. C. M. & St. P. Ry., 40 Minn. 267.)

Mississippi (Laws 1884, page 34, sec. 6): "Shall so revise such tariffs as to allow a fair and just return on the value of such railroad, its appurtenances and equipments, . . . and to increase or reduce any of said rates according as experience and business operations may show to be just."

New Hampshire (Laws 1883, page 79, sec. 4): "Fix tables of maximum charges for the transportation of passengers and freight upon the several railroads operating within this State, and shall change the same from time to time, as in the judgment of said board the public good may require; and said rates shall be binding upon the respective railroads." (Merrill v. R. R. Co., 63 N. H. 259.)

North Dakota (Laws 1890, page 355): "In case the commissioners shall at any time find that any part of the tariffs of rates, fares, charges or classifications, so filed and published, as herein provided, are in any respect unequal or unreasonable, they shall have the power and are hereby authorized and directed to compel any common carrier to change the same and adopt such rate, charge or classification as said commissioners shall declare to be equitable and reasonable."

South Carolina (Laws 1888, page 65): "Authorized and required to make for each of the railroad corporations doing business in this State, as soon as practicable, a schedule of reasonable and just rates of charges for the transportation of freights and cars on each of said railroads."

On the other hand in—

Kansas, Laws 1883, page 186, section 11, reads:

"No railroad company shall charge, demand or receive from any person, company or corporation, an unreasonable price for the transportation of persons or property, or for the hauling or storing of freight, or for the use of its cars, or for any privilege or service afforded by it in the transaction of its business as a railroad company. And upon complaint in writing, made to the board of railroad commissioners, that an unreasonable price has been charged, such board shall investigate said complaint, and if sustained shall make a certificate under their seal, setting forth what is a reasonable charge for the service rendered, which shall be *prima facie* evidence of the matters herein stated."

Section 18 authorized an inquiry upon the application of parties named in reference to freight tariffs and an adjudication upon such inquiry as to the reasonable charge for such freights. Section 14 required a notice of the determination to be given to the railroad company, and a communication of a failure to comply with such determination in a report to the governor; and section 19 reads:

"Any railroad company which shall violate any of the provisions of this act shall forfeit for every such offense, to the person, company, or corporation aggrieved thereby, three times

the actual damages sustained by the said party aggrieved, together with the costs of suit, and a reasonable attorney's fee, to be fixed by the court; and if an appeal be taken from the judgment, or any part thereof, it shall be the duty of the Appellate Court to include in the judgment an additional reasonable attorney's fee for services in Appellate Court or courts."

The effect of these provisions was to make the determination of the commission *prima facie* evidence of what were reasonable rates, and to subject the railroad company failing to respect such determination or to prove error therein to the large penalties prescribed in section 19.

Kentucky. The act of April 6, 1882, sec. 1 (General Stat. page 1021), provided that "if any railroad corporation shall wilfully charge, collect or receive more than a just and reasonable rate of toll or compensation for the transportation of passengers or freight in this State . . . it shall be guilty of extortion," &c. Further sections created a commission, and by section 19 the commissioners were authorized to hear and determine complaints under the first and second sections of this act, and upon such complaint and hearing file their award with the Clerk of the Circuit Court, which might be traversed by any party dissatisfied, and the controversy thereafter submitted to the court for consideration and judgment.

Massachusetts (Pub. Stat. 1882, sec. 14, page 603): "The board shall have the general supervision of all the railroads and railways, and shall examine the same." Section 15, if it finds that any corporation has violated the provisions of the act, or any law of the Commonwealth, it shall give notice thereof in writing, and if the violation shall continue after such notice shall present the facts to the Attorney-General, who shall take such proceedings thereon as he may deem expedient. By section 193 special authority is given to the board to revise the tariffs and fix rates for the transportation of milk. See *Littlefield v. Fitchburg Railroad Co.* (158 Mass. 1).

New York. Vol. 6, Rev. Stat., chap. 39, contains the railroad law of the State. By section 157, the board of railroad

commissioners "shall have general supervision of all railroads." By section 161, if in the judgment of the board it appears necessary that "additional terminal facilities shall be afforded, or that any change of rates of fare for transporting freights or passengers or in the mode of operating the road or conducting its business, is reasonable and expedient in order to promote the security, convenience and accommodation of the public, the board shall give notice and information in writing to the corporation of the improvements and changes which they deem proper;" and by section 162 "the Supreme Court at special term shall have power in its discretion in all cases of decision and recommendations by the board which are just and reasonable to compel compliance therewith by mandamus, subject to appeal," &c.

This last section was enacted in 1892 (Laws 1892, chap. 676), and prior thereto, in *People v. L. E. & W. Railroad Company* (104 N. Y. 58), it was held that the judgment of the commissioners was not binding on the railroad company in respect to certain terminal facilities ordered, and could not be enforced by mandamus.

Vermont. Laws 1886, page 20, sec. 7, provided that if any railroad company "unjustly discriminates in its charges for transporting passengers or freight, or usurps any authority not granted by its charter, or wilfully refuses to comply with any reasonable recommendations of said board of commissioners, or enters into any combination or conspiracy with any other person, persons, or corporation, whereby the rates of charge for the transportation of freight or passengers, or the cost of commodities is unduly increased, said commissioners shall give notice thereof in writing to such corporations, or person, and if the act complained of is continued after such notice the board shall report the same to the then next session of the General Assembly, and if in their judgment such action is irregular, may at any time make application to the Supreme or County Court for any remedy warranted by law."

The legislation of other States is referred to in the fourth annual report of the Interstate Commerce Commission, Ap-

pendix E, pages 243 and following: It is true that some of these statutes were passed after the Interstate Commerce Act, but most were before, and they all show what phraseology has been deemed necessary whenever the intent has been to give to the commissioners the legislative power of fixing rates.

It is one thing to inquire whether the rates which have been charged and collected are reasonable—that is a judicial act; but an entirely different thing to prescribe rates which shall be charged in the future—that is a legislative act. (*Railway Co. v. Minnesota*, 134 U. S. 418, 458; *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S. 362, 397; *Railway Co. v. Gill*, 156 U. S. 649, 663; *Railway Co. v. Interstate Commerce Commission*, 162 U. S. 184, 196; *Railway Co. v. Interstate Commerce Commission*, 162 U. S. 197, 216; *Munn v. Illinois*, 94 U. S. 113, 144; *Peik v. Railway Co.*, 94 U. S. 164, 178; *Express cases*, 117 U. S. 1, 29.)

It will be perceived that in this case the Interstate Commerce Commission assumed the right to prescribe rates which should control in the future, and their application to the court was for a mandamus to compel the companies to comply with their decision; that is, to abide by their legislative determination as to the maximum rates to be observed in the future. Now, nowhere in the Interstate Commerce Act do we find words similar to those in the statutes referred to giving to the commission power to "increase or reduce any of the rates;" "to establish rates of charges;" "to make and fix reasonable and just rates of freight and passenger tariffs;" "to make a schedule of reasonable maximum rates of charges;" "to fix tables of maximum charges;" to compel the carrier "to adopt such rate, charge or classification as said commissioners shall declare to be equitable and reasonable." The power, therefore, is not expressly given. Whence then is it deduced? In the first section it is provided that "all charges . . . shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful." Then follow sections prohibiting discrimination, undue preferences, higher charges for a short than for a long haul, and

pooling, and also making provision for the preparation by the companies of schedules of rates, and requiring their publication. Section 11 creates the Interstate Commerce Commission. Section 12, as amended March 2, 1889 (25 Stat. 858), gives it authority to inquire into the management of the business of all common carriers, to demand full and complete information from them, and adds, "and the commission is hereby authorized to execute and enforce the provisions of this act." And the argument is that in enforcing and executing the provisions of the act it is to execute and enforce the law as stated in the first section, which is that all charges shall be reasonable and just, and that every unjust and unreasonable charge is prohibited; that it cannot enforce this mandate of the law without a determination of what are reasonable and just charges; and as no other tribunal is created for such determination, therefore it must be implied that it is authorized to make the determination, and, having made it, apply to the courts for a mandamus to compel the enforcement of such determination. In other words, that though Congress has not in terms given the commission the power to determine what are just and reasonable rates for the future, yet as no other tribunal has been provided, it must have intended that the commission should exercise the power. We do not think this argument can be sustained. If there were nothing else in the act than the first section commanding reasonable rates, and the twelfth empowering the commission to execute and enforce the provisions of the act, we should be of the opinion that Congress did not intend to give to the commission the power to prescribe any tariff and determine what for the future should be reasonable and just rates. The power given is the power to execute and enforce, not to legislate. The power given is partly judicial, partly executive and administrative, but not legislative. Pertinent in this respect are these observations of counsel for the appellees:

"Article II, sec. 3, of the Constitution of the United States, ordains that the President 'shall take care that the laws be faithfully executed.' The act to regulate commerce is one

of those laws. But it will not be argued that the President, by implication, possesses the power to make rates for carriers engaged in interstate commerce." . . .

"The first section simply enacted the common law requirement that all charges shall be reasonable and just. For more than a hundred years it has been the affirmative duty of the courts 'to execute and enforce' the common law requirement that 'all charges shall be reasonable and just;' and yet it has never been claimed that the courts, by implication, possessed the power to make rates for carriers."

But the power of fixing rates under the Interstate Commerce Act is not to be determined by any mere considerations of omission or implication. The act contemplates the fixing of rates and recognizes the authority in which the power exists. Section 6 provides, among other things, "that every common carrier subject to the provisions of this act shall print and keep open to public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its route. . . . Such schedule shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places, in every depot, station or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected." . . .

"No advance shall be made in the rates, fares and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares or charges go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Reductions in such published rates, fares or charges shall only be made after three days' previous public notice, to

be given in the same manner that notice of an advance in rates must be given.

"And when such common carrier shall have established and published its rates, fares and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares and charges as may at the time be in force.

"Every common carrier subject to the provisions of this act shall file with the commission hereinafter provided for, copies of its schedules of rates, fares and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said commission of all changes made in the same. Every such common carrier shall also file with said commission copies of all contracts, agreements or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said commission. Such joint rates, fares and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said commission, in so far as may, in the judgment of the commission, be deemed practicable; and said commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published.

"No advance shall be made in joint rates, fares and charges, shown upon joint tariffs, except after ten days' notice to the commission, which shall plainly state the changes pro-

posed to be made in the schedule then in force, and the time when the increased rates, fares or charges will go into effect. No reduction shall be made in joint rates, fares and charges, except after three days' notice, to be given to the commission as is above provided in the case of an advance of joint rates. The commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

"It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect or receive from any person or persons a greater or less compensation for the transportation of persons or property or for any services in connection therewith between any points as to which a joint rate, fare or charge is named thereon than is specified in the schedule filed with the commission in force at the time.

"The commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient."

Finally, the section provides that if any common carrier fails or neglects or refuses to file or publish its schedule as provided in the section, it may be subject to a writ of mandamus issued in the name of the people of the United States at the relation of the commission. Now, but for this act it would be unquestioned that the carrier had the right to prescribe its tariff of rates and charges, subject to the limitation that such rates and charges should be reasonable. This section 6 recognizes that right, and provides for its continuance. It speaks of schedules showing rates and fares and charges which the common carrier "has established and which are in force." It does not say that the schedules thus prepared, and which are to be submitted to the commission, are subject, in any way, to the latter's approval. Filing with the commission and publication by posting in the various stations are all that is required, and are the only limitations placed on the carrier in respect to the

fixing of its tariff. Not only is it thus plainly stated that the rates are those which the carrier shall establish, but the prohibitions upon change are limited in the case of an advance by ten days' public notice, and on reduction by three days. Nothing is said about the concurrence or approval of the commission, but they are to be made at the will of the carrier. Not only are there these provisions in reference to the tariff upon its own line; but further when two carriers shall unite in a joint tariff (and such union is nowhere made obligatory, but is simply permissive), the requirement is only that such joint tariff shall be filed with the commission, and nothing but the kind and extent of publication thereof is left to the discretion of the commission.

It will be perceived that the section contemplates a change in rates either by increase or reduction, and provides the conditions therefor; but of what significance is the grant of this privilege to the carrier if the future rate has been prescribed by an order of the commission and compliance with that order enforced by a judgment of the court in mandamus? The very idea of an order prescribing rates for the future, and a judgment of the court directing compliance with that order, is one of permanence. Could anything be more absurd than to ask a judgment of the court in mandamus proceedings that the defendant comply with a certain order unless it elects not to do so? The fact that the carrier is given the power to establish in the first instance and the right to change, and the conditions of such change specified, is irresistible evidence that this action on the part of the carrier is not subordinate to and dependent upon the judgment of the commission.

We have, therefore, these considerations presented: First. The power to prescribe a tariff of rates for carriage by a common carrier is a legislative and not an administrative or judicial function, and, having respect to the large amount of property invested in railroads, the various companies engaged therein, the thousands of miles of road, and the millions of tons of freight carried, the varying and diverse conditions attaching to such carriage, is a power of supreme deli-

cacy and importance. Second. That Congress has transferred such a power to any administrative body is not to be presumed or implied from any doubtful and uncertain language. The words and phrases efficacious to make such a delegation of power are well understood and have been frequently used, and if Congress had intended to grant such a power to the Interstate Commerce Commission it cannot be doubted that it would have used language open to no misconstruction, but clear and direct. Third. Incorporating into a statute the common law obligation resting upon the carrier to make all its charges reasonable and just, and directing the commission to execute and enforce the provisions of the act, does not by implication carry to the commission or invest it with the power to exercise the legislative function of prescribing rates which shall control in the future. Fourth. Beyond the inference which irresistibly follows from the omission to grant in express terms to the commission this power of fixing rates, is the clear language of section 6, recognizing the right of the carrier to establish rates, to increase or reduce them, and prescribing the conditions upon which such increase or reduction may be made, and requiring, as the only conditions of its action, first, publication, and, second, the filing of the tariff with the commission. The grant to the commission of the power to prescribe the form of the schedules, and to direct the place and manner of publication of joint rates, thus specifying the scope and limit of its functions in this respect, strengthens the conclusion that the power to prescribe rates or fix any tariff for the future is not among the powers granted to the commission.

These considerations convince us that under the Interstate Commerce Act the commission has no power to prescribe the tariff of rates which shall control in the future, and, therefore, cannot invoke a judgment in mandamus from the courts to enforce any such tariff by it prescribed.

But has the commission no functions to perform in respect to the matter of rates; no power to make any inquiry in respect thereto? Unquestionably it has, and most important

duties in respect to this matter. It is charged with the general duty of inquiring as to the management of the business of railroad companies, and to keep itself informed as to the manner in which the same is conducted, and has the right to compel complete and full information as to the manner in which such carriers are transacting their business. And with this knowledge it is charged with the duty of seeing that there is no violation of the long and short haul clause; that there is no discrimination between individual shippers, and that nothing is done by rebate or any other device to give preference to one as against another; that no undue preferences are given to one place or places or individual or class of individuals, but that in all things that equality of right, which is the great purpose of the Interstate Commerce Act, shall be secured to all shippers. It must also see that that publicity, which is required by section 6, is observed by the railroad companies. Holding the railroad companies to strict compliance with all these statutory provisions and enforcing obedience to all these provisions tends, as observed by Commissioner Cooley in *In re Chicago St. Paul & Kansas City Railway Company* (2 I. C. C. R. 231, 261), to both reasonableness and equality of rate as contemplated by the Interstate Commerce Act.

We have not overlooked the statute of Nebraska, nor the decision of the Supreme Court of that State in respect thereto. This statute was approved March 31, 1887, a few weeks after the passage of the Interstate Commerce Act (Laws Nebraska, 1887, page 540), and was obviously largely patterned upon that act. The general obligations incorporated into that act in respect to reasonableness of rates, prohibitions of discrimination, undue preferences, etc., are all in the Nebraska statute. A commission, called "a board of transportation," is also provided for (section 11), and is charged with the general duty of enforcing the act and supervising the railroad companies in the State. Section 17, which is more full and specific than any to be found in the Interstate Commerce Act, provides that "said board shall have the general supervision of all railroads operated by steam in the State, and shall inquire into any

neglect of duty or violation of any of the laws of this State by railroad corporations. . . . It shall carefully investigate any complaint made in writing, and under oath, concerning any lack of facilities, . . . or against any unjust discrimination against either any person, firm or corporation or locality, either in rates, facilities furnished or otherwise; and whenever, in the judgment of said board . . . any change in the mode of conducting its business or operating its road is reasonable and expedient in order to promote the security and accommodation of the public, or in order to prevent unjust discriminations against either persons or places; it shall make a finding of the facts, and an order requiring said railroad corporation to make such repairs, improvements," etc.

In *State v. F. E. & M. V. R. R. Co.* (22 Neb. 313), it appeared that the board of transportation had found that certain rates enforced upon the road of the defendant company were excessive, and that certain other rates less than those in force were reasonable and just. On application to the Supreme Court it was held that the State was entitled to a mandamus compelling obedience to such determination, the court observing, p. 329: "In the case under consideration the board found that the rates and charges of the respondent were excessive; in other words, that there was unjust discrimination against that part of the State, and, having so found, the board is clothed with ample power to require such railway company to reduce its rates and charges. The power of the board, therefore, to establish and regulate rates and charges upon railways within the State of Nebraska is full, ample and complete."

Without criticising in the least the logic of this decision, it is enough to say that it is based upon a section which gives wider and more comprehensive power to the supervising board than is given in the Interstate Commerce Act to the commission, and does not justify the inference that the latter has the same power in respect to prescribing rates that by such decision was declared belonging to the Nebraska Board of Transportation.

Some reliance was placed in the argument on this sen-

tence, found in the opinion of this court in *Railway Company v. Interstate Commerce Commission* (162 U. S. 184, 196), "if the commission, instead of withholding judgment in such a matter until an issue shall be made and the facts found, itself fixes a rate, that rate is prejudged by the commission as reasonable." And it is thought that this court meant thereby that while the commission was not in the first instance authorized to fix a rate, yet that it could, whenever complaint of an existing rate was made, give notice and direct a hearing, and upon such hearing determine whether the rate established was reasonable or unreasonable, and also what would be a reasonable rate if the one prescribed was found not to be, and that such order could be made the basis of a judgment in mandamus requiring the carrier thereafter to conform to such new rate. And the argument is now made, and made with force, that while the commission may not have the legislative power of establishing rates, it has the judicial power of determining that a rate already established is unreasonable, and with it the power of determining what should be a reasonable rate, and enforce its judgment in this respect by proceedings in mandamus.

The vice of this argument is that it is building up indirectly and by implication a power which is not in terms granted. It is not to be supposed that Congress would ever authorize an administrative body to establish rates without inquiry and examination; to evolve, as it were, out of its own consciousness, the satisfactory solution of the difficult problem of just and reasonable rates for all the various roads in the country. And if it had intended to grant the power to establish rates, it would have said so in unmistakable terms. In this connection it must be borne in mind that the commission is not limited in its inquiry and action to cases in which a formal complaint has been made, but, under section 13, "may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made." By section 14, whenever an investigation is made by the commission, it becomes its duty to make a report in writing, which

shall include a finding of the facts upon which its conclusions are based, together with a recommendation as to what reparation, if any, ought to be made to any party or parties who may be found to have been injured. And by sections 15 and 16, if it appears to the satisfaction of the commission that anything has been done or omitted to be done, in violation of the provisions of the act, or of any law cognizable by the commission, it is made its duty to cause a copy of its report to be delivered to the carrier, with notice to desist, and failing that to apply to the courts for an order compelling obedience. There is nothing in the act requiring the commission to proceed singly against each railroad company for each supposed or alleged violation of the act. In this very case the order of the commission was directed against a score or more of companies and determined the maximum rates on half a dozen classes of freight from Cincinnati to Chicago respectively to several named Southern points and the territory contiguous thereto, so that if the power exists, as is claimed, there would be no escape from the conclusion that it would be within the discretion of the commission of its own motion to suggest that the interstate rates on all the roads in the country were unjust and unreasonable, notify the several roads of such opinion, direct a hearing, and upon such hearing make one general order, reaching to every road and covering every rate. It will never do to make a provision prescribing the mode and manner applicable to all investigations and all actions equivalent to a grant of power in reference to some specific matter not otherwise conferred.

Again, it is said that this court, in *Interstate Commerce Commission v. B. & O. R. R. Co.* (145 U. S. 263, 276), declared that "the principal objects of the Interstate Commerce Act were to secure just and reasonable charges for transportation; to prohibit," etc.; but this by no means carries with it any suggestion that the way by which unjust and unreasonable rates were to be prevented was by intrusting to the commission the power to prescribe what should be charged.

Still again, it is urged that the commission has decided that

it possesses this power and has acted upon such decision, and an appeal is made to the rule of contemporaneous construction. But it would be strange if an administrative body could by any mere process of construction create for itself a power which Congress had not given to it. And, indeed, an examination of the decisions of the commission discloses this curious fact. In the early case of *Thatcher v. Delaware & Hudson Canal Company et al.* (1 I. C. C. R. 152, 156), a case heard and decided in July of the year in which the commission was created, the commission declined, for lack of evidence, to fix certain rates, saying: "It is therefore impossible to fix them in this case, even if the commission had power to make rates generally, which it has not. Its power in respect to rates is to determine whether those which the roads impose are for any reason in conflict with the statute."

Again, it will be perceived that nowhere in the act is there any suggestion of a maximum or minimum rate. The first section declares that the rates shall be reasonable and just, and prohibits every unreasonable and unjust charge. Now the rate may be unreasonable because it is too low as well as because it is too high. In the former case it is unreasonable and unjust to the stockholder, and in the latter to the shipper. It was declared by this court in *Covington, &c., Turnpike Co. v. Sandford* (164 U. S. 578, 597), that in determining the question of reasonableness "its duty is to take into consideration the interests both of the public and of the owner of the property;" but in the matter of the *Chicago St. Paul and Kansas City Ry. Co.*, *supra*, the commission held that it had no power to order rates to be increased upon the ground that they were so low that persistence in them would be ruinous. The opinion in that case, prepared by Commissioner Cooley, and with his usual ability, while seeking to prove that under the provisions of the statute the commission has no power to prescribe a minimum or to establish an absolute rate, but only to fix a maximum rate, goes on further to show how the operation of other provisions of the act tend to secure just and reasonable rates. Were it not for its length, we should be glad to quote all that he says on

the subject. We think that nearly all of the argument which he makes to show that the commission has no power to fix a minimum or establish an absolute rate, goes also to show that it has no power to prescribe any tariff, or fix any rate to control in the future.

Our conclusion then is that Congress has not conferred upon the commission the legislative power of prescribing rates either maximum or minimum or absolute. As it did not give the express power to the commission it did not intend to secure the same result indirectly by empowering that tribunal to determine what in reference to the past was reasonable and just, whether as maximum, minimum or absolute, and then enable it to obtain from the courts a peremptory order that in the future the railroad companies should follow the rates thus determined to have been in the past reasonable and just.

The question certified must be answered in the negative, and it is so ordered.

Index.

- A** CTS of Congress, how to Construe..... 375
 Acworth, W. M. (quoted).....18, 43
 Adams, C. F. (quoted).....41, 53
 Agreements Between Carriers (see also "Traffic Association"); Should be Legalized, 112; Not Kept, 142; Joint Traffic, 147; Why Necessary, 107, 306; Text of the Trans-Missouri, 315; Invalid at Common Law, 337; Prior to Int. Com. Act, 387; Approved by the Commission, 388; Never Observed..... 395
 Alabama, Powers of the Commission 404
 American Railways, Compared with European 34, 48, 89, 127, 183, 210, 248; Best in the World, 84; Growth of, 89, Cheapest Rates, 84, 92, 266, 268, 283; Capitalization of, 248, Train Service Compared 274, 301
 "American Railway Rates, Are They Too High"..... 255
 Anti-Trust Law, The, 53; Purpose of Perverted in Practice, 13; Diversity of Judicial Opinion, 54; Text of, 314; Does it Apply to Railroads, 334; Not in Conflict with Interstate Commerce Act, 338; Its Objects, 341; What it Prohibits..... 347
 Apthorp, Henry (quoted).....181, 183
 Associations, (see Traffic Association).
 Atchison, Topeka & Santa Fe Railway, The152, 162
 Atkinson, Edward (quoted)..... 266
 Atwater, Professor (quoted)..... 39
 Australia, Speed of Trains in..... 274
 Austria, Railway Policy of 50
BAGGAGE, Free211, 229
 Baggage System, the American. 301
 Bankrupt Railways, Cannot Retire from Business, 11; as Competitors, 97; Numbers of..... 260
 Bankruptcy, Course of a Railway Towards, 124; Threatens all Railways, 142..... 142
 Belgium, Railways of, 49; Wages in, 35; Rates in, 211; 229; Capitalization 249
 Berne, Conference of..... 7
 Blanchard, George R. (quoted)..... 283
 Board of Trade, The National, on Pooling 276
 Bonds, Producing no Interest.... 259, 282
 Brown Case, Decision in ... 147
 "Business Interests and the Pooling Bill" 286
 Buyers Fix the Price of Rates 190
CALIFORNIA, Powers of the Commission..... 404
 Canada, No Scalping in..... 294
 Capital, Wars Against Itself, 95; Combinations of 346
 Capital in Railways, 1; Low Returns on, 35, 80, 126, 131, 160, 169, 184, 187, 238, 259, 268, 282; in Kansas, 153; How to Frighten, 161; in Georgia, 246; in Southern Railways, 251; Wiped Out in Foreclosures 269
 Capitalization, General Statistics 240, 248
 Central of Georgia Railroad, The.... 238
 Charter of a Railroad Company a Contract 121
 Chicago, Burlington & Quincy Railroad, The 273
 Chicago Rock Island & Pacific Railway 168
 Chicago, Track Elevation in, 130; Rates Compared with St. Louis.... 150
 Chicago & Alton Railroad, Taxes of, 134; Rates on, 179; An American Road, 186; Sold at Auction, 186; Passenger Earnings of, 192; Wages On..... 193
 Classifications, Uniformity of. 61, 306, 390
 Coal Rates in Kansas 172
 Colorado, Conditions in..... 108
 Commerce, Meaning of Term 348
 Common Law and the Carriers..... 101
 Commissions on Ticket Sales..... 263
 Commissions (see "State Commission" and "Int. Com. Com.")
 Competition, True and False, 10; Between Railways Differs from Other Kinds, 15, 16, 124; Between Routes Joining Large Cities, 57; May be Excessive, 67, 125, 142, 262; Results of, 68; Railways Very Sensitive to, 69; Cannot be Abolished, 78; Abuses of, 96; in the Old Days, 151; Keeps Rates Down, 183; of Markets, 173; Needless, 186; Reducing Rates, 191; Unnecessary Expenses of, 263; Need of Restricting, 306; Evils of Unrestricted..... 343, 353, 359
 Competitions Compared..... 9
 Commutation Rates..... 196

- Conferences Between Commissioners and Railway Men Urged 109
- Congress and the Anti-Trust Act, 338; Was it Unreasonable?..... 367
- Consolidation, Causes of, 8; Pooling Would Check, 8; Probable in the Future, 78; Still Going On, 233; Tendency to..... 273
- Consumer, Cut Rates and the, 166, 173; Pays the Freight..... 232, 241
- Contract, Charter of Railway Company a..... 121
- Contract Relations Between Railways Necessary..... 56
- Contract, The Liberty of..... 378
- Contracts in Restraint of Trade..... 362, 367
- Cooley, Hon. T. M. (quoted), 15, 17, 40, 41, 48, 56, 65..... 69
- Co-operation, Results of Between Railways..... 61
- Corn, Rates on..... 166
- Corporations, Public Relations of, 97; Public and Private..... 356, 396
- Cost of Building, Per Mile..... 249, 270
- Cost of Service, Increase in..... 181
- Cullom Committee of 1886..... 38, 55
- Cullom Senator (quoted)..... 51
- Cut Rates, Who Profits by?..... 166, 178
- DANIELS, George H.** (quoted)..... 177
- Denver & Rio Grande Railroad..... 117
- Dillon, Sidney (quoted)..... 1
- Discrimination in Rates Injurious to Trade, 12, 13; Most Active Where Competition is Keenest, 16; is What Makes Complaint, 73; Most Frequent at Present..... 290
- Distance Tariff, The Kansas..... 170
- Dividends, Guaranteed by the State 129; Not Large..... 32, 188, 259, 269
- EARNINGS** and Rates Compared, 139; and Mileage Compared, 203; Per Mile of Line..... 234
- Economies, Limit of Railway, 203; Compelled by Legislative Interference, 207, 214; Compulsory in Hard Times..... 235, 260, 281
- Employees (see also "Wages"), Number of Railway, 33, 80; Wages of, in America and Europe, 35; Interests of, Identical with Company's, 114, 244; Influence of, in Success of a Railroad, 118; Relations to Employer, 119; Number in Illinois, 178; Suffer by Economies..... 235, 243, 260, 268
- England, Pooling in, 44; Railway Policy of, 45; Poor Passenger Accommodations, 183; Rates in, 210, 229, 268; Capitalization of Railways..... 248
- Engines, Cost of..... 194
- English and American Rates, 34, 184, 210, 229..... 268
- English Commission, The, of 1882.... 16
- Erie Railroad, The, Expenditures of. 80
- European Railways and American Compared, 34, 48, 84, 127, 183, 210, 229, 248, 283..... 301
- Expenses, Classification of Operating 237
- Export Rates..... 173
- FALLING** Rates, 31, 71, 73, 122, 137, 139, 144, 155, 166, 179, 204, 228, 235, 266, 281, 283, 287..... 307
- Farm Values and Railways Compared..... 188
- Farm Products, Volume of..... 233
- Fast Running..... 151
- Favoritism to Individuals..... 74
- Flour, Rates on, in South..... 246
- Foreclosures, Capital Wiped Out in. 269
- France, Wages in, 35; Railway Policy of, 48; Railway Mileage of, 127; Government Control in, 129; Rates in, 210, 229; Capitalization..... 249
- Freight Traffic, Loss in..... 132
- Freight, Different Classes of..... 233
- Freight, Who Pays It?..... 166, 241
- GAUGE** of Track, Changes in..... 307
- Georgia, Powers of the Commission..... 405
- "Georgia, The Railways of"..... 232
- Georgia, Earnings in, 234; Low Rates in..... 246
- Germany, Railway Policy of, 49; Wages in, 35; Miles of Railway, 127; Capitalization of, 248; Railways Compared With American..... 301
- Government and Railway Revenues Compared..... 1, 79
- Government Tariffs..... 1
- Government, The, Does Not Receive Rebates..... 3
- Government Ownership, Results of, 3; Preferable to Some Things, 85; Objections to..... 274, 313
- Government Control of Rates..... 129, 312
- Government Regulation, Limitations of..... 305
- Grain, Rates on..... 172
- Granger Legislation..... 146
- HADLEY, Prof. A. T.** (quoted) 41, 48..... 247
- Hilkoff, Prince, on American Railways..... 302
- History of American Railways..... 90
- Holland, Wages in, 35; Rates in, 210, 229
- Howe, U. S. Senator (quoted)..... 17
- ILLINOIS**, Powers of the Commission..... 405
- Illinois, Legislation in, 123; Railway Policy of, 129; Taxation of Rail-

- ways in, 131; Railways in Kansas Compared with, 161, 171; People Dependent on Railways in, 178; Railways in, Well Conducted, 197; Railways of, 199; Population and Mileage of 199
- Import Duties Impartially Collected 6
- Indianapolis, Cincinnati & Lafayette Railway 151
- "Industry of the Rail, The" 79
- Ingalls, M. E. (quoted) 97
- Interest on Bonds 239, 282
- International Railway Agreements... 7
- Interpretation of Statutes 342, 377
- Interstate Commerce Commission, The, Endorses Traffic Associations, 56; Indebted to the Associations, 61; The Public Might Abolish, 61; Proposition to Enlarge a Mistake, 85; Good Work of, 276; Railways Wish to Help, 287; Has Public Approval, 310; Does Not Need Strengthening, 310; Rate-Making Power of the 398, 410, 415
- Interstate Commerce Act, The, 17; Benefits of, 17; Fallacies of, 19; Does Not Forbid Associations, 62; Injured by the Trans-Missouri Decision, 63; Cardinal Principle of, 73; Small Benefit From, 75; Does Not Stop Discrimination, 76; Amendments Needed, 78; Provisions of, 100; Companies Try to Obey, 105; Needs Amending, 142, 148; Obeyed at First, 146; Good and Evil of, 275; Why it Has Failed, 288; Does it Conflict With Anti-Trust Law, 336; A Special Act, 380; Summary of its Terms, 386; Does Not Forbid Agreements, 387; Confers no Rate-Making Power on the Commission 410
- Investment in Railways (see "Capital").
- Investors, Number of, in American Railways 33
- Iowa, Commission Law of, 157; Compared With Kansas, 164, 171, 174; Taxes in, 165; Local Rates in, 171; Passenger Fares in, 224; Condition of Railways in, 231; Powers of the Commission, 405
- Italy, Rates in, 210, 229; Capitalization of Railways in 249
- JEFFERSONIANISM** 309
- Joint Rates, 386; Why Desirable, 45; Cannot be Made Without Agreements 62
- Joint Traffic Association, The 147
- KANSAS**, Rates and Earnings in, 152; Early Railroad in, 159; Railway Taxes in, 160; Compared with Iowa, 163, 171, 174; Poverty of, 165; Growing Prosperous, 167; Miles of Railway in, 169; Compared with Illinois, 171; the Commission's Powers 406
- Kentucky, Powers of the Commission 407
- Knapp, Hon. M. A. (quoted) 15
- LABOR**, Money Paid to, by Railways 80, 92, 160, 268, 270, 273, 280
- Labor, Injury to, by Inventions 345
- Lape, Commissioner (quoted) 42
- Legislation, Hostile Character of All Railway, 79, 158; Has Injured the Public, 81; Need of Wise 86; Uniformity of State and Federal Needed, 112; in Illinois, 123; Granger, 146; in Iowa, 158; Has Not Reduced Passenger Rates, 190; Will Destroy the Weak, 191; Produces Bankruptcies, 204; Compels Economies, 207, 221; Encouraging Competition, 262; Mistakes of, 271; Text of Anti-Trust Act 314
- Legislative Relief, Railway Claims to 31
- Legislatures, Power of, Over Railways 156
- Li Hung Chang, on American Railways 302
- "Limitations of Government Regulation of the Railroads" 305
- Live Stock Rates 174
- Local and Through Business Compared 170, 190
- Localities, No Discrimination Between 58
- Long Haul Rates 264
- MASSACHUSETTS**, Powers of the Commission 407
- Maximum Rates, Laws for, 156, 420; Justice of 206
- Merchandise, Volume of Freight 233
- Michigan, Passenger Rates in, 209, 213, 214 223
- Miller, J. D. (quoted) 299
- Mines, Freight Furnished by 233
- Minnesota, Powers of the Commission 405
- Mississippi, Powers of the Commission 405
- Missouri, Earnings of Railways in, 210; Rates in, 210; Physical Condition of Railways in, 220; Advantages of 221
- Monopolies, Advantageous 1
- Morrison, Wm. R. 311
- NEW YORK**, Powers of the Commission 407
- New York Central Railroad, Rates on, 185, 209; Population on, 216; Tickets Redeemed by 296
- Nimmo, Jos. Jr. (quoted) 22

Norfolk & Western Railway, The.....	233
Nebraska, Rate-Making Laws in	417
Newcomb, H. T. (quoted)	282
New Hampshire, Powers of the Commission.....	405
Newspapers, Opposed to Scalping....	297
New York State, Rates in.....	185, 209, 228

O HIO & Mississippi Railway, The..	151
Ohio, Two-Cents-a-Mile Rate in, 177.....	215
Overbuilding, Evils of, 95; in Illinois, 201; in Georgia.....	234
Olney, Richard (quoted).....	301
Operating Expenses, Relation of, to Earnings, 203; Classification of, 236; Have Not Decreased.....	270

P ARALLEL Lines, Building of, a Crime, 82; Injury Done by, 91; How Built, 94; Effects of.....	186
Parliamentary Trains.....	210
Passes, Free	148
"Passenger Fares in Iowa"	224

Passenger Traffic Unprofitable, 132, 159, 181, 189, 211, 218	226
--------------------------------------------------------------------	-----

Passenger Fares, Two-Cents-a-Mile, 158, 177, 189, 208; in Michigan, 214; in Iowa	224
----------------------------------------------------------------------------------------	-----

Passengers, Cost of Carrying, 211, 217	267
----------------------------------------------	-----

Patterson, Judge (quoted).....	15, 290
--------------------------------	---------

Patterson Bill, The, Endorsed by Commercial Interests...41, 277, 286,	291
-----------------------------------------------------------------------------	-----

Pennsylvania Railroad, The, 144, Low Rates on, 283; As a Public Benefactor.....	308
---------------------------------------------------------------------------------	-----

People, The, Responsible For Railway Problem, 124; Benefit of Railways to, 129; Power of, Over Railways Unlimited, 133; Interests of With Railways Mutual.....	141, 271
----------------------------------------------------------------------------------------------------------------------------------------------------------------	----------

"People and Their Railways, The" ..	88
-------------------------------------	----

"Plight of the Railways, The"	279
-------------------------------------	-----

"Pooling of Railway Earnings, The" ..	67
---------------------------------------	----

Pooling, The Counterpart of Government Ownership, 4; Would Check Consolidation, 8; Why it is Needed, 21, 24; Defeated in Congress by Ignorance, 23; What it is, 23; Outline of an Agreement, 23; Does Not Raise Rates, 26; Does Not Restrict Tonnage, 26; Unreasonable Hostility to, 27; Endorsements of, 37; No Acceptable Substitute for, Suggested, 38; Endorsed by Kansas Commission, 40; Judge Cooley on, 40; C. F. Adams on, 41; A. F. Walker on, 41; Prof. Hadley on, 41; Endorsed by Commercial Interests, 41; and State Commissions, 42; in England, 43; On the Continent of Europe, 48; Objects of, 72; Prevents Discrimination, 73; Prejudice Against, 74;	
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

Not a Sure Cure for Railway Evils, 75, 86; Should be Under Proper Public Control, 77; Why it is Needed, 85; Public Prejudice Against, Unfounded, 235; Judge Reagan in Favor of, 275; Approved by National Board of Trade, 276; and Business Interests, 286; Its Prohibition an Experiment, 288; What Good it Would Do.....	291
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----

Pools, "Their Equity and Public Value," 1; Small Balances Actually Transferred Under, 26; Effects of, 29; Two Aspects of, 67; Objects of..	72
--------------------------------------------------------------------------------------------------------------------------------------------	----

Population, Miles of Railway to, 122, 128, 154, 185, 201, 211, 230, 235	268
-------------------------------------------------------------------------------	-----

Postoffice and Railways.....	14, 81
------------------------------	--------

Potter Law, The.....	213
----------------------	-----

Producer, Do Low Rates Benefit the.....	166, 173
-----------------------------------------	----------

Profits of Railways (see "Capital").	
--------------------------------------	--

Prussia, Rates in.....	172
------------------------	-----

Public Interests and Railways Mutual, 88, 103, 271	284
----------------------------------------------------------	-----

Publication of Tariffs.....	56
-----------------------------	----

"QUEEN & Crescent Case, The," Text of Decision.....	398
-------------------------------------------------------------------	-----

R AILS, Cost of.....	194
-----------------------------	-----

"Railway Problem, The".....	266
-----------------------------	-----

Railway Men, An Address to, 114; as a Family, 114; and Irreligion	115
-------------------------------------------------------------------------	-----

Railway Investments, Magnitude of, 1, 268	279
-------------------------------------------------	-----

Railway Business, The, Particularly Sensitive to Competition, 69; Its Complexity, 69; Peculiarities of, 70; Disgraceful Condition of, 148; Not Like Merchant's, 232; is of a Public Nature.....	355
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----

Railway Officers, Generally Honest, 83; Have Tried to Comply With Law, 84, 105; Have Injured Railways, 141; Bad Faith of, 147; Their Ability, 150; Often to Blame for Low Rates.....	259
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----

"Railway Rates and Earnings in Kansas".....	152
---------------------------------------------	-----

"Railways, a Retrospect".....	144
-------------------------------	-----

"Railways and Their Revenue"	137
------------------------------------	-----

"Railways and the Public"	121
---------------------------------	-----

"Railways of Illinois, The"	199
-----------------------------------	-----

Railways, Bankrupt, Cannot Retire From Business, 11; Not to Blame for Their Condition, 14; Number of Persons Dependent on, 33, 178; Not Profitable, 35, 80, 126, 131, 160, 169, 261; Legislative Hostility Towards, 36, 123; They Do Not Object to Regulation, 77; Public Suspicion of, 79; As Employers of Labor, 79, 270, 277; As Disbursers of Money, 80, 280; Attacks on, Injure the Public, 81; Entitled to Just Treatment, 83; Cannot be Oppressed Without	
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

- Public Injury, 88; Have Not Been Blameless, 90; Diversity of Characteristics of, 102; Entitled to Equal Protection of the Law, 122, 133; How They Become Bankrupt, 124; Miles of in the World, 127; Taxation of in Illinois, 131; Better Public Attitude Toward, 138, 140; The Emblem of Civilization, 145; Want Justice, 152; Entitled to Share in Public Prosperity, 167; in Kansas, 160; and Iowa, 165; as Disbursers of Charity, 176; Deserve Public Consideration, 177, 198, 279; Compared With Farm Properties, 188; Should Not Be Oppressed, 197; Creatures of Law, 202; The, of Georgia, 232; Expenses of, Have Not Decreased, 270; Depressed Condition of, 280, 284; Threatening Outlook for, 287; All They Want is a Chance, 291; Foreign Opinions on American, 301; As Highways, 305; As Public Benefactors, 308; Subject to Anti-Trust Act, 334, 382; Compared With Other Corporations, 344; Public Corporations, 353; As Monopolies..... 358
- Rate Wars Profit Nobody..... 18
- Rate-Making Power, Should be in Directors, 149; Not in the Interstate Commerce Commission, 85, 311, 398; Congress Did Not Exercise 404
- Rate-Making, a Legislative Function 414
- "Rate Reductions in Kansas"..... 162
- Rates, Made by One Line Control Others, 14; Some Standard of, Must be Reasonable, 24; Compared With Trust Prices, 28; How They Have Fallen in 20 Years, 31, 137; Loss to Companies by Falling, 32, 257, 307; American and Foreign, Compared, 33, 184, 229; May be too Low, 35, 72, 260, 282; No General Complaint Against Existing, 44; Public Posting of, 56; Can Only be Kept Uniform by Co-operation, 57; Stability in, Necessary, 65, 73; Cannot be Adjusted Like Merchants' Prices, 71, 232; Cheapest in America, 84, 92; at Present too Low, 94; Interdependence of, 111; Railways Entitled to Reasonable, 122; Government Control in Europe, 129; Unprofitable, 132; Small Margins of, 133; Passenger and Freight, 136; Affected by Density of Traffic, 137, 159, 214, 253; What Reductions in, Amount to, 139, 257; Decreased on Pennsylvania Railroad, 145; Effect of the Brown Decision on, 148; Cut Rates Unprofitable, 149; in Kansas, 154, 166; on Atchison, Topeka & Santa Fe, 155; Must Vary According to Conditions, 156; Who Benefits by Reductions in, 166, 241, 277; in Kansas and Illinois, 172; on Coal, 172; in Prussia, 172; Export, 173; on Grain, 174; on Live Stock, 175; Effect on Wages, 179, 190, 243; Reductions in Illinois, 180; Why Special Rates Are Made, 182; Fixed by the Buyer, 190; Low Rates Do Not Increase Business, 192, 212, 230; Not Under Railroad's Control, 195; Reduction in, Compared With General Prices, 205, 235, 267; in New York, 209; and Michigan, 209; in European Countries, 211; in Iowa, 226; in Georgia, 236; Ton Per Mile in Different States, 237; Table of Southern States, 246; Are They Too High, 248, 260; Railway Rates Compared With Others, 255; Absurd Competitive, 264; Need of Reasonable, 270; Unremunerative, Injure the Public, 271; Notice of Changes in, 306; Trans-Missouri Agreement Did Not Raise, 326; What Are Reasonable, 354; Permanence of Desirable, 390; Powers of State Commissions to Make, 404; Downward Tendency of 31, 71, 73, 122, 137, 144, 155, 166, 179, 204, 228, 235, 236, 266, 281, 283, 287.... 307
- Reagan, John H. (quoted) 38, 275; His Share in Interstate Commerce Law 288
- Reasonable Rate, What Constitutes, 354; Railways Entitled to, 122; People Not Satisfied With, 123; Why Needed, 141; The Iowa Standard of 158
- Rebates, Diminished by Pooling..... 25
- Receivers, Sometimes Worst Competitors, 97, 352; Should be Restrained, 142; as Lawbreakers, 149; Miles of Railway Operated by..... 260
- Regulation, Railways Do Not Object to, 77; by State Commissions..... 101
- Religion, Value of, to Railway Men. 116
- Restraint of Trade, Limiting Competition Does Not Necessarily Create, 69; All Combinations in, prohibited, 249; Reasonable and Unreasonable, 350, 362..... 366
- Roberts, George B. (quoted)..... 308
- Rolling Stock, Extravagant Use of.. 264
- ST. LOUIS, Rates to, Compared with Chicago..... 150
- Scalping, Forbidden in Europe, 294; and in Canada, 294; Immorality of, 294; No Benefit to the Public, 295; Bibliography of, 296; Press Opposed to, 297; What is it? 297; Encourages Forgery, 299; Injures the Public..... 303
- "Scalping of Railroad Tickets, The" 293
- Schoonmaker, Commissioner (quoted) 1; 8..... 14
- Shareholders of Railways, Number of, 33; Do Not Get Rich, 80, 126, 187, 238, 246, 269..... 282
- Shippers, Influence of on Railways, 13, 19, 258; Large vs. Small, 15, 21, 150; Stable Rates Necessary to, 57; Cut Rates Benefit Large..... 277
- Smith, Hon. Charles S. (quoted)..... 39
- Socialism, Advance of..... 55
- South Carolina, Powers of the Commission..... 406

South, Railways of not Profitable...	251
Southern Pacific Company, The.....	136
Southern States, Rates in, Compared	246
Speed of Passenger Trains, 151, 181; In Australia.....	274
Spencer, Herbert (quoted).....	53
Stability of Rates, Necessary to Merchants, 57; Judge Cooley's Opinion of, 65; Desirability of.....	72, 390
State Commissions, Regulation by, 101; Difficulties of, 102; Urged to Confer with Managers, 109; Of Illinois, 132; Compliment Railways, 141; Powers of, 156; Course of the Kansas, 163; The Iowa.....	224
State, Relations of to Companies, 121, 222; Encourages Competing Roads, 123; Guaranteeing Dividends, 129; Responsibility of to Railways.....	133
Statutes, How to Construe.....	342, 377
Stock, (see also "Capital") Not Paying Dividends, 252, 259, 269.....	282
Stock, Watered.....	36, 154, 187, 269, 284
Stockholders, What They Can Do....	98
Stephenson, George, Jr. (quoted), 52,	53
Stephenson, Robt. (quoted).....	53
Sterne, Simon (quoted).....	39
Streets, Railways on.....	130
Supreme Court Decisions.....	2
Sweden, Railways of.....	248
TARIFFS , Government and Railway, 1; Multi-tude of Railway, 22; Should be Made by Directors, 149; Public Posting of, 56; The Framing of.....	305
Taxation, of Chicago & Alton Railroad, 134, 180; Freaks of.....	272
Taxes, Paid by Erie Railroad, 80; in Kansas, 160, 169; In Iowa and Kansas Compared, 165; In Illinois.....	180
Telegraph Charges and Railway Rates.....	29
Texas, Poverty of Railroads in.....	239
Through Business, and Local Compared, 170; Might be Abandoned....	195
Tickets, Redemption of by Railways, 295; Paying Commissions on, 203; Thefts of.....	298
Ticket Scalping (see "Scalping").	
Title, of Act of Congress.....	375
Ton-Mile Statistics.....	267, 277, 307
Tracks, Elevating in Chicago.....	130
Traffic Associations, the Condensation of the Best Experience, 5; Necessity of, 55; Interstate Commerce Commission Approves of, 58; Do Not Restrain Commerce, 59; What They Do, 59; Number of Different, 59; And the Law, 60; Keep Valuable Statistics, 61; Help an Interstate Commerce Commission, 61; Not Forbidden by the In-	

terstate Act, 62; Necessary to Protect the Public, 64; Great Benefits of, 65; Necessity of, 107; Should Work With the Government, 112; Joint Traffic Association Organized, 147; Text of the Trans-Missouri Agreement, 315; Do Not Stop Rate Cutting, 360; Not Forbidden by Interstate Commerce Act, 387; Endorsed by the Commission.....	389
Traffic, Density of and Rates.....	136
Train Mile, Cost of, 217.....	264
Train Service, Excellence of Depends on Rates, 190, 219; Cost of Competitive.....	264
Transit, Feeding in.....	176
"Trans-Missouri Decision, The," 53, 101, 141; Paradox of, 107; Text of..	314
Trans-Missouri Freight Association, Text of Agreement of, 316; Did Restrain Trade, 364; Declared Illegal.....	364
Traveling Men, on Rates, 191; A Selfish Minority.....	196
Travelers' Protective Association, The.....	195
Trust Prices and Railway Rates.....	28
Turnpikes, Cost of Transport by.....	255
"Two-Cent-Fare Bill, An Argument on The"	206
"Two-Cents - Per - Mile Passenger Rates, On"	176
UNIFORMITY , Necessary in Management, 85; also in Legislation, 112; in Classification.....	306, 392
United States Supreme Court, Jurisdiction of.....	332
VALUATION of Railway Property. 130	
Vermont, Power of the Commission.....	408
Volume of Business, as Affected by Rates.....	192, 212
WALKER, A. F. (quoted).....	41
Wages in America and Europe, 35, 129; Money Paid in, by Railways, 80, 270; on Railways Good, 93; Affected by Reduced Rates, 179, 190, 223, 235, 242, 277; Have Increased, 180, 206, 270; in Illinois, 193; Threatened by Legislation, 207; Reduced in Hard Times.....	236, 242
Watered Stock.....	36, 154, 187, 269, 284
Weak Lines Control in Absence of Agreements.....	64, 76
Wholesale Principle in Rates.....	218
Wisconsin, Rate Legislation in.....	213
Wood, Sir Henry Truman (quoted)...	302
Workmen's Trains.....	192
World's Railway Mileage, The.....	127
Y. M. C. A. , The, Railroad.....	117

